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(24,006)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 330.

PHŒNIX RAILWAY COMPANY OF ARIZONA, APPELLANT,

vs.

W. PAUL GEARY, FRANK A. JONES, AND AMOS W. COLE, MEMBERS OF THE CORPORATION COMMISSION OF THE STATE OF ARIZONA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA.

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1 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E 11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Bill of Complaint.

To the Honorable Judges of the District Court aforesaid:

The Phœnix Railway Company of Arizona, as complainant, brings this its bill of complaint against said defendants above named and each of them and thereupon your orator complains and says:

I.

That complainant is and for a number of years last past has been a corporation duly organized and existing under the laws of the state of Arizona and is a resident and citizen of said state; and that each of the above named defendants, to-wit, W. Paul Geary, Frank A. Jones, Amos W. Cole, George P. Bullard and Frank H. Lyman is a citizen of the state of Arizona residing in Phœnix, Arizona.

II.

That this is a suit arising under the constitution and laws of the United States for that complainant seeks to have a certain order of the Arizona Corporation Commission hereinafter specifically de-
2 scribed, declared to be in contravention of the constitution of the United States, and asks to have said order set aside and annulled; and for that complainant seeks to enjoin said defendants from enforcing or attempting to enforce said order of the Arizona Corporation Commission, or from instituting any suit, prosecution or proceeding to enforce the same or any part thereof, or from imposing any fine or penalties on account of any violation for refusal to obey or observe said order, for the reason that said order is violative of the Constitution of the United States; and for that complainant also seeks to have certain statutory and constitutional provisions of the state of Arizona providing penalties for violation of the order of the Arizona Corporation Commission hereinafter more specifically described, to be adjudged and declared to be in contravention of the constitution of the United States;

That the amount in controversy in this suit and for which relief is sought, exclusive of interest and costs, greatly exceeds the sum or value of $3,000.00.

III.

That said defendants, W. Paul Geary, Frank A. Jones and Amos W. Cole are now and ever since the organization of the state of Arizona have been the duly qualified and acting members of and constitute the Corporation Commission of the state of Arizona, and under the laws of said state it is made the duty of said Commission to see that the orders made by said Commission, including the order hereinafter set forth and complained of, are duly enforced and that suits for penalties be instituted against parties failing or refusing to obey or carry out such orders; that said defendant George P. Bullard is and has been since the organization of said state the duly qualified and acting Attorney General thereof; that it is made the duty of the said Attorney General to direct or institute prosecutions for alleged violations of the provisions of the constitution and
3 statutes of the state of Arizona affecting public service corporations and to institute prosecutions to recover penalties for alleged violation of the orders of said Arizona Corporation Commission; that Frank H. Lyman is and has been the duly qualified and acting county attorney for Maricopa County, the county in which the property of the complainant is situated; that it is made the duty of the county attorney of such county to aid in any investigation, hearing or trial had, and to institute and prosecute actions or proceedings for the enforcement of the provisions of the constitution and statutes of the state of Arizona affecting public service corporations and for the punishment of all violations thereof.

IV.

That complainant now owns and operates and for a number of years last past has owned and operated a system of street railways in and adjacent to the city of Phœnix, county of Maricopa, state of Arizona, and that a part of said system of street railways so owned and operated extends along Washington Street in the said city of Phœnix; that said Washington street line extends from Sixteenth street on the east boundary of said city to Phœnix, westward on Washington street to Seventeenth avenue, in said city; on Seventeenth avenue said Washington street line runs north one block to Adams street, and thence west on Adams street to Twenty-second avenue; that commencing at the eastern terminus of the said Washington street line and thence running west to Seventh street, a distance of nine blocks, the said line consists of a single track; that from Seventh street to Seventh avenue, a distance of fourteen blocks, and including the business section of said city of Phœnix, said line consists of a double-track; that from Seventh avenue to Twenty-second avenue, the western terminus of said line, the said Washington street line consists of a single track with switches at
4 Thirteenth avenue and at Seventeenth avenue; that between Seventh street and Seventh avenue on the Washington street line, where there is a double track, as aforesaid, the following lines make connections with said Washington street line, to-wit: A line running south from Twelfth street to the railroad track; the Indian

School, Brill and Glendale lines, running north at First street; the depot line running south at First avenue, the Second avenue line running north at Second avenue, and the Grand Avenue line running north from Seventh avenue; that west of Seventh avenue on said Washington street line no other lines connect therewith; that that part of the city of Phœnix lying west on Seventh avenue is a thinly and sparsely settled community lying on the outskirts of the said city of Phœnix; that the district served by said west Washington street line is bounded on the north by Van Buren street, being but three blocks from Washington street, and on the south by Harrison street, said Harrison street being but four blocks from Washington street; that west of Seventh avenue on said Washington street line there is but light traffic on the street cars of the complainant; that while running through said district west of Seventh avenue the cars of the complainant are never crowded and seldom contains half a car-load of passengers; that on said Washington street line a 15-minute schedule is maintained as published by the complainant and as required by the Corporation Commission; that with a single track with the switches aforesaid complainant is able to and does maintain said schedule and is able to and does render adequate, prompt and efficient service to the people using said car-line; that west of Seventh avenue, as aforesaid, there is not sufficient traffic to require or to support a double track; that the needs of the people do not justify additional trackage and that there is no public necessity nor public demand therefor; that along the line lying west of Seventh avenue a sufficient number of people do not use the cars of the complainant to justify the construction of a double-track and that the said double track is not required nor justified by the needs of the people on the entire Washington street line; that with the single track now in use the defendant does maintain and is able to maintain a prompt and efficient schedule, and to render adequate service to the people using said car line, and that the needs of the people are and can be adequately served by the single track now in use.

V.

That to construct a double-track from Seventh Avenue to Seventeenth Avenue would at the very lowest estimate cause your complainant to expend $13,725; that the assessed value of the property of your complainant employed in the railway business as made for the purpose of taxation, for the year 1913, is, exclusive of real estate, $250,000; that this is a low estimate of the value of said property; that there are now issued and outstanding bonds of the Complainant Company in the sum of $1,250,000, which bonds bear interest at the rate of 5% per annum; that the total capital stock of said Company now issued amounts to $2,000,000; that from July 1, 1911 to July 1st, 1912, the operating revenues of your petitioner amounted to $101,153.61; that the cost of operating said business as legitimate operating expenses during the same period was $106,044.77, said expense not including interest on bonded indebtedness, thus making a deficit for said period of $4,891.16; that from July 1st, 1912 to

July 1, 1913, the gross operating revenues of your petitioner amounted to $112,124.51; that the cost of operating said business as legitimate operating expenses during the same period was $109,-799.48, said cost not including interest on the bonded in-
6 debtedness, making a net gain for said period of $2,325.03; that for the total period from July 1, 1911, to July 1, 1913, the total operating revenue amounted to $213,278.12, while the total expenses for said period were $215,844.25, not including interest on the bonded indebtedness, thus making a deficit for said period of $2,566.13; that the operation of said street railway has not been remunerative to your complainant, nor has it afforded a fair return on the actual value of the property; that there has not been afforded your complainant a reasonable rate of return upon the value of said property, and for the most part has not been afforded any return at all upon said value; that to cause your complainant to incur the expense of constructing a double-track from Seventh to Seventeenth avenues in said city of Phœnix, both by increasing the value and investment in said property by this additional outlay and by increasing the operating expense by the expense of maintaining the additional trackage will prevent your complainant from earning a fair return or any return whatever on the value of its property.

VI.

Yet, notwithstanding the foregoing, and on or about the 26th day of May, 1913, said W. Paul Geary, Amos W. Cole and Frank A. Jones, as Corporation Commissioners of the state of Arizona, prepared and filed before said Corporation Commission a complaint alleging that on account of the density of traffic and necessity for better service, the operation of said street railway upon a single track is unjust, unreasonable, unsafe, improper, inadequate and insufficient, and prayed that the Commission of which they are the members make an order compelling defendant therein, your complainant herein, to double-track its line of street railway on said Washington street from a point about 100 feet east of the point of inter-
7 section of Seventh avenue with Washington street to Seventeenth avenue, or so much thereof as the Commission should determine from the evidence presented at the hearing was necessary; upon which complaint so made and filed by said Commission before itself said Commission proposed to and thereafter did sit in judgment.

Defendant in said proceeding, to-wit, Complainant herein, filed its answer thereto, which, among other things, demurred to the complaint, denied the power or authority of the Corporation Commission of Arizona to grant the relief prayed for and denied that on account of the density of traffic on Washington street in the city of Phœnix it is necessary to maintain a double track between the points mentioned in the complaint; and further denied that on account of the necessity for better service in the operation of the street railway of the defendant it is necessary to have a double-track between the said points, and allegated that a single track was adequate to accommo-

date the public using the street railway system between the said points; and further alleged the financial inability at the present time of the defendant to construct said double-track.

On June 16, 1913, said Corporation Commission heard the matters involved and produced before themselves a few witnesses who were unable to show and did not show a public need for the construction of the double-track as prayed for in said complaint and who were unable to and did not show that the construction of a double-track was justified or required by the number of people using the said line, nor by the nature of the community served by said line; and who were unable to and did not show that density of traffic and need of better service required said double track; the defendant Railway Company produced thereupon evidence showing that a single track was sufficient and adequate to properly serve the public
8 using the same, and that the construction of a double track was not required for the needs of the people, nor justified by public necessity;

That notwithstanding the lack of any substantial evidence to sustain the said complaint, and notwithstanding the evidence sustaining the street railway company's contention said Commission, on the 23d day of June, 1913, made its decision to the effect that the single track was insufficient to properly serve the public and thereupon ordered the defendant to said complaint to build and construct a double-track line of street railway on West Washington street in the city of Phœnix, Arizona, from the intersection of Seventh avenue with Washington street to Seventeenth avenue; said construction was ordered to be commenced within thirty days from date of said order and to be completed by September 1, 1913; a copy of which said order is hereto annexed marked Exhibit "A".

Defendant to said complaint on the 3rd day of July, 1913, and within due time, filed its application for a rehearing stating in detail all matters and things in this bill set forth and showed the said order to be per se unreasonable and unlawful and not justified by the evidence and upon facts disclosed and that the same was in violation of the Fourteenth Amendment to the Constitution of the United States. Thereafter and on the 12th day of August, 1913, said Commission without further hearing entered an order overruling said application for rehearing and making its aforesaid order effective on and after the 1st day of September, 1913, and requiring the work in said order specified to be begun on said first day of September and completed by the first day of December, 1913, and said order will be in full force and effect on and after said date and said Commission will, as required by the statutes of Arizona, direct the Attorney General to institute all necessary suits and prosecutions and said Attorney General will institute all such suits and prosecutions
9 against the Street Railway Company and the respective officers and agents of said Compay, to compel and force by such means obedience to said order.

VII.

That the decision and order of said Corporation Commission hereinbefore set forth and complained of was and is arbitrary, unreasonable, invalid and was wholly unsupported by and contrary to any substantial evidence heard by said Corporation Commission and was and is inconsistent with and contrary to the facts.

VIII.

That the requirements of said order would involve your complainant in a large expense amounting at the very lowest estimate to $13,725.00; that said expense is unnecessary and not required by the needs of the public for the reasons: that there is no congestion or density of traffic requiring said double track; that on said west Washington street line there is but a light traffic on the street cars of the complainant; that the district served by said line is limited in extent and is sparsely and thinly settled; that there is no inadequacy of service but an adequate, prompt and efficient service is maintained and the needs of the people properly served with the single track and switches now in use, and with said single track complainant is able to and does maintain a prompt, adequate, and efficient service; that the advantage to be derived from said additional trackage would not justify the expense required. Said order, in that it requires your complainant to expend a large sum of money for which there is no public need, is unreasonable, unjust, unlawful, and deprives your complainant of its property without due process of law and without just compensation, in violation of the Constitution of the United States and of the State of Arizona, and denies to your complainant the equal protection of the laws in violation of the Constitution of the United States.

IX.

That said order is unreasonable, unlawful, confiscatory and violative of the Fourteenth Amendment to the Constitution of the United States by depriving your complainant of its property without due process of law and by denying to it the equal protection of the laws in that compliance with said order will cause serious and irreparable loss to it and serious and irreparable injury to and destruction of its property rights and interests, and will compel your complainant to operate its said lines at a serious loss and will prevent your complainant from making a fair return on the value of its property or from making any return whatever on the value of said property; that the revenues of said company have in the past not equalled the operating expenses; that during the period from July 1, 1911 to July 1, 1912, there was a deficit of $4,891.16, and from July 1, 1912 to July 1, 1913, there was a net gain of only $2,325.03; that the assessed value of the property of the complainant, exclusive of real estate, for the year 1913, was $250,000.00, which is a low estimate of the value of said property; that the business has never been remunerative and is not now offering any or a fair return on the value

of the property or the amount invested therein; that a compliance with said order will increase the investment in said line and will also increase the operating expenses and will thus make it even more impossible to secure a fair return or even any return at all on said property.

X.

Complainant Railway Company further states that it is informed and believes and upon such information and belief states the fact to be that prior to and at the time of said hearing the Arizona
11 Corporation Commission — the city of Phœnix was contemplating and is now contemplating the paving of that part of Washington Street west of Seventh Avenue and extending west to Seventeenth avenue; that Ordinance No. 123, Section 7, of the city of Phœnix, provides; "In case the Common Council of Phœnix shall establish other grades or pave any of the streets of said city of Phœnix the said J. O. Dunbar, his successors or assigns, agree that they will conform said railroad to said grade and will, without cost to the said city, grade and pave *and* space between the rails of said road for the distance of two feet on both outer sides of rail with the same material used by the city in paving said street and under the supervision of the city engineer."

That the Phœnix Railway Company of Arizona is the successor to J. O. Dunbar; that because of the order of the Arizona Corporation Commission entered herein compelling the construction of a double track the complainant would, in the event that street were ordered to be paved as aforesaid, be compelled by said ordinance to pave a much greater portion of said street than it would, were it not for said order of the Corporation Commission, otherwise be compelled to pave; that whatever demand there is or has been for said double track is not due to the needs of the public for said double track, but arises solely from the desire of those interested in having said west Washington street paved and in having a greater proportion of the expense of said paving paid for by the complainant; that to construct said second track in the absence of paving would cost complainant at a very low estimate $13,725.00, and to construct the same and do said additional paving would cost complainant at the least $23,978.15.

XI.

That said order is unlawful, unjust and unreasonable for the reason that the evidence before said Corporation Commission
12 failed to establish the allegations of the complaint, viz., that on account of the density of traffic or the necessity for better service it is necessary to have a double track as alleged in said complaint, and failed to establish a public need for said double track to justify said order, or that a single track was not reasonably adequate to give the community through which said line is operated or the people using the same adequate service.

XII.

Complainant further alleges that under a previous order of the Commission it has expended and will be required to expend many

thousand dollars in improvements and betterments ordered to be installed by said Commission; that it has no money in the treasury and no means of securing or obtaining money to expend in the laying of the double track called for in said order of the Commission herein complained of, and that it is financially unable at present to install or pay for the work called for in said last mentioned order in addition to the expense called for by the previous order of the Commission.

XIII.

Under the constitution and statutes of Arizona, public service corporations against whom any order may be made by said Corporation Commission are required, under severe penalties, to put the same into effect at the time ordered by said Commission and to keep the same in effect until modified or abrogated; that while a right to review the reasonableness and lawfulness of said order is given by the statutes of Arizona in some suit which may be brought by the public service corporation affected in the Superior Court of the county in which the Commission has its domicile, against the Commission as defendant, to vacate and set aside such order, yet, under the constitution and statutes of Arizona such court is prohibited from issuing any
13 injunction or restraining order until after the final determination or adjudication of the matter in said court, and in the meantime said order as provided will be in full force and effect and will have to be obeyed, and should Complainant commence an action in the Courts of the State of Arizona there is no possible way for it to escape irreparable loss, for there is no Court of the State of Arizona that has jurisdiction to enjoin the enforcement of the Commission's order pending proceedings in court or under any other circumstances whatever. Thus, in Paragraph *b*, Section 67, Chapter 90 of the Session Laws of Arizona of 1912, it is provided:

"No court of this state shall have jurisdiction to enjoin, restrain, suspend or delay any order or decision of the Commission or to enjoin, restrain or interfere with the Commission in the performance of its official duties, and the rules, regulations, orders or decrees fixed by the Commission shall remain in force pending the decision of the court."

And in Section 68 of said chapter it is also provided:

"All rules, regulations, orders, charges and decrees of the Commission shall remain in full force and effect pending a final decision of the court with reference thereto. No order staying, restraining or suspending any order, rule, regulation, charge or decree of the Commission shall be made by the court of this state."

Thus it appears that the complainant is and will be without remedy in the state courts of Arizona against the said order, and in the meantime will be compelled to comply with said order and, consequently, be deprived of its property without due process of law, and will not receive the equal protection of the laws. It is also provided in Paragraph (*b*), Section 74 of said Chapter, that

"All penalties accruing under this Act shall be cumulative of each other and the suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar

to any criminal prosecution against any public service corporation or any officer, director, agent or employe thereof, or any other corporation or person, or be a bar to the exercise by the Commission of its power to punish for contempt."

14 By Section 76, Paragraph (*a*) of said chapter, it is provided that,

"Any public service corporation which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the Commission in a case in which a penalty has not been hereinbefore provided for, said public service corporation is subject to a penalty of not less than $100 nor more than $5,000 for each and every offense."

By Paragraph (*b*) of said section it is provided that

"Every violation of any order, decision, decree, rule, direction, demand or requirement of the Commission, or any portion thereof, by any corporation or person, is a separate and distinct offense and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense."

By Paragraph (*c*) of said section it is provided that

"In construing and enforcing the provisions of this Act relating to penalties the acts, omission or failure of any officer, agent or employe of any public service corporation acting within the scope of his official duties or employment shall in every case be and be deemed to be the act, omission or failure of such public service corporation."

By Section 77 of said Chapter it is further provided:

"Every officer, agent or employee of any public service corporation, who violates or fails to comply with, or procures, aids or abets any violation by any public service corporation of any provision of the Constitution of this State or of this Act, or who fails to obey, observe or comply with any order, decision, rule, direction, demand, or requirement or any part or provision thereof, of the Commission, or who procures, aids, or abets any public service corporation in its failure to obey, observe and comply with any such order, decision, rule, direction demand, or requirement, or any part or provision thereof in a case in which a penalty has not hereinbefore been provided for such officer, agent or employee, is guilty of a misdemeanor and upon conviction thereof is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year or both such fine and imprisonment."

Section 79 of said Chapter also provides:

"Every person who, either individually, or acting as an officer, agent or employe of a corporation other than a public service corporation, violates any provision of this Act, or fails to obey, observe or comply with any order, decision, rule, demand or requirement, or any part or portion thereof, of the Commission, or who procures, aids, or abets any such public service corporation in its violation of this Act, or in its failure to obey, observe or comply with any such order, decision, rule, direction, demand or requirement, or any

part or portion thereof, in a case in which a penalty has not
15 hereinbefore been provided for such person, is guilty of a misdemeanor, and upon conviction thereof shall be punished by being imprisoned in a county jail for a period not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment."

Section 81 of said Chapter provides also:

"In case any public service corporation, corporation or person shall fail to observe, obey or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or portion thereof, of the Commission or any commissioner, such public service corporation, corporation or person shall be in contempt of the Commission and shall be fined by the Commission a sum not less than one hundred dollars nor more than five thousand dollars, to be recovered before any court of competent jurisdiction, in this State.

Procedure had in such contempt proceedings shall be the same as in courts of record in this State. The remedy prescribed in this section shall not be a bar to or affect any other remedy prescribed in this Act, but shall be cumulative and in addition to any such other remedy or remedies."

The Constitution of Arizona, under Article XV, Section 16, provides:

"If any public service corporation shall violate any of the rules, regulations, orders or decisions of the Corporation Commission, such corporation shall forfeit and pay to the State not less than one hundred dollars, nor more than five thousand dollars for each such violation, to be recovered before any court of competent jurisdiction."

And in Section 17 thereof, it is provided

"Nothing herein shall be construed as denying to public service corporations the right of appeal to the courts of the State from the rules, regulations, orders or decrees fixed by the Corporation Commission, but the rules, regulations, orders or decrees so fixed shall remain in force pending the decision of the courts."

Each and all of the above statutory and constitutional provisions of the state of Arizona were adopted for the purpose and with the design to coerce railway companies and others affected by any order made by said Corporation Commission to acquiesce in such order and to prevent a resort to the courts to test the reasonableness, justness and validity thereof; that each of the aforesaid provisions were adopted to intimidate street railway companies and others and to
deter them in resorting in an orderly way to the courts to
16 have a judicial determination of the reasonableness, justness and validity of any order made by said Corporation Commission, and was intended to and does deprive complainant of the right to resort to the courts upon just and reasonable terms for a judicial determination of its right in the premises, whilst other litigants in said state are accorded such right without such burden, and each of the aforesaid statutory and constitutional provisions are therefore violative of the Fourteenth Amendment to the Con-

stitution of the United States as depriving complainant of its property without due process of law and as denying to it the equal protection of the laws.

Furthermore, in any action brought in the courts of said State to recover damages or to enforce any of said penalties the Company would not have the right to inquire into the validity of said order or to review the proceedings had before the Commission owing to said Public Service Corporation Act, which provides as follows:

"SEC. 65. In all collateral actions or proceedings, the orders and decisions of the Commission which have become final shall be conclusive."

The defendants, Bullard, Attorney General of the State, and Lyman, County Attorney of Maricopa County, have no discretion in the matter but the absolute duty is imposed upon them by Section 72 of said Act upon the request of the Commission to institute suits for the recovery of said penalties.

That Section 73 of said Act provides as follows:

(*a*) In case any public service corporation shall do, cause to be done, or permit to be done, any act, matter, or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by the Constitution, any law of this State or any order or decision of the Commission, such public service corporation shall be liable to the persons or corporations affected thereby for all loss, damages or injury caused thereby or resulting therefrom, and if the Court shall find that the act or omission was willful, the court may in addition to the actual
17 damages award damages for the sake of example and by way of punishment. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any corporation or person.

(*b*) No recovery as in this section provided shall in any manner affect a recovery by the State of the penalties in this Act provided or the exercise by the Commission of its power to punish for contempt."

From the foregoing provisions of the constitution and statutes of Arizona it will be seen that if said complainant fails to comply with the order of said Corporation Commission, unless suspended or set aside, it and its respective officers and agents will be subjected to prosecutions and severe penalties and possible imprisonment, unless it foregoes its right under the Federal Constitution, to carry on and conduct its business without unreasonable and unlawful interference, and without being compelled to comply with unreasonable and unlawful orders, and without being deprived of its property without due process of law, and being denied the equal protection of the laws;

That penalties prescribed for the violation of said order are so harsh, drastic and unreasonable that no owner or operator of street railway property can invoke the jurisdiction of any court to test the validity thereof, except at the risk of confiscation of its property or of imprisonment in jail, of the officers, agents and employes of the company owning such property, or both, and that said order

thus denies to the complainant the equal protection of the laws and deprives it of its property without due process of law and is for this reason unconstitutional and void.

That said order of said Commission requires Complainant to commence work under said order on the first day of September, 1913, and said order will cause irreparable damage to complainant unless the operation thereof is enjoined and restrained by this Court pending the trial of the issue herein presented.

18 By reason of the matters and things hereinbefore in this bill of Complaint set forth, it is apparent and complainant alleges that it has not a plain or adequate remedy at law, or any remedy whatsoever in said courts of Arizona to protect it in the lawful possession and use of its property or in the exercise of its lawful rights in respect to the carrying on of its business, and that it will be unjustly and unlawfully deprived of its property to its great and irreparable damage; that in this Court alone can the rights of complainant in the premises be adequately or justly determined and protected.

In consideration whereof and for as much as complainant has no adequate remedy at law and can only have relief in a court of equity where such matters are peculiarly cognizable, complainant prays:

1. That the aforesaid order of the Corporation Commission of Arizona dated June 23, 1913, complained of, be declared to be unreasonable, unfair and unjust and beyond the authority of the said Corporation Commission to make and that the same be declared to be null and void in contravention of the provisions of the Constitution of the United States;

2. That each of the aforesaid statutory and constitutional provisions of the state of Arizona set out and referred to in this complaint be adjudged and declared in contravention of the Constitution of the United States.

3. That the defendants, viz. W. Paul Geary, Frank A. Jones and Amos W. Cole, members of the Corporation Commission of the State of Arizona, George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, and their successors in office, be temporarily and permanently enjoined from in any way or manner enforcing or attempting to enforce the aforesaid order of the Corporation Commission dated June 23, 1913, or any part thereof, and from in-

19 stituting or causing to be instituted any suit, prosecution, or proceeding to enforce the same or any part thereof, or for the recovery of fines or penalties on account of any violation or refusal to obey or observe said order;

4. That complainant be permitted from time to time to make as additional party defendants to this suit, any person or persons who may claim or pretend to claim against the said complainant any right or rights arising under or by virtue of the aforesaid order or who may institute any prosecutions or proceedings to enforce the same, as may be necessary or proper;

5. That complainant may have such other and further relief as is just and equitable, as well as their costs of this suit.

And may it please your Honor to grant unto complainant a writ of subpœna of the United States of America to issue out of and under the seal of this Honorable Court directed to the said W. Paul Geary, Frank A. Jones and Amos W. Cole, members of the Corporation Commission, and George P. Bullard, Attorney General, and Frank H. Lyman, county attorney for Maricopa County, commanding them and each of them upon a day certain therein to be named and under a certain penalty to be and appear before this Honorable Court then and there to answer, but not under oath (an answer under oath being expressly waived) all and singular the premises and to stand to, perform and abide by said order, direction and decree as may be made against them in the premises, and that pending the final hearing of this cause, a temporary restraining order and a temporary injunction may be issued as above prayed, and complainant will ever pray.

PHŒNIX RAILWAY COMPANY OF ARIZONA,
By S. H. MITCHELL.

L. H. CHALMERS,
EDWARD KENT,
CHALMERS AND KENT,
Solicitors for Complainant.

20 DISTRICT OF ARIZONA,
State of Arizona, County of Maricopa, ss:

S. H. Mitchell, being duly sworn, upon oath, says: That he resides in Phœnix, Arizona, and is Manager of the Phœnix Railway Company of Arizona, complainant in the above entitled bill of complaint; that he is familiar with the matters and things mentioned in said bill of complaint which he has read; that he knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Deponent further states that the sources of his information and the grounds of his belief as to all matters in the foregoing bill of complaint stated on information and belief are knowledge of and familiarity with the property and affairs of said complainant company in his capacity as manager of said Company.

Deponent further says that the reason why this verification is made by the deponent and not by one of the officers of the complainant company herein is that none of said officers are within the State of Arizona.

(Signed) S. H. MITCHELL.

Subscribed and sworn to before me, this 27th day of August, A. D. 1913.

[SEAL.] (Signed) J. L. GUST,
Notary Public in and for Maricopa County, Arizona.

My Commission expires February 21st, 1916.

21 "EXHIBIT A."

Before the Arizona Corporation Commission.

Docket No. 84.

ARIZONA CORPORATION COMMISSION, Plaintiff,
vs.
PHŒNIX RAILWAY COMPANY OF ARIZONA, Defendant.

Appearances:

Geo. P. Bullard, Attorney General of Arizona, for Arizona Corporation Commission.
Messrs. Chalmers & Kent, for Defendant.

Opinion & Order.

Pursuant to notice duly given, this cause came on for hearing the 16th day of June, 1913, at the office of the Commission in Phœnix.

From the evidence it appears that the Defendant does not maintain the time schedule in the operation of its cars on West Washington Street, heretofore published by the Defendant, and ordered by this Commission, and the chief reason for such failure appears to be want of trackage facilities.

The single track line operated by the defendant on West Washington Street in Phœnix from 7th Avenue to 17th Avenue is insufficient and inadequate to properly serve the general public using the same, and in the interests of the public generally, proper transportation according to an adequate and proper time schedule and the time schedule now published and endeavored to be maintained by the defendant, demands the installation forthwith by said defendant of additional trackage facilities. We are of the opinion that the double tracking of that part of West Washington Street as prayed for in the complaint herein filed, is a clear public necessity, proven to be such

22 by the nature and productiveness of the business appurtenant thereto, the character of service rendered, and the needs of the people in their health, safety, comfort and convenience.

We are of the opinion that congestion of traffic, and resulting delays occasioned thereby, must of necessity continue as the same now exists, unless the relief herein ordered is immediate, and it is the decision of this Commission, and,

It is Hereby Ordered: That the Defendant build and construct a double track line of street railway, standard *guage*, on West Washington Street in the city of Phœnix, Arizona, from the intersection of Seventh Avenue with said west Washington Street to Seventeenth Avenue.

Such construction shall be commenced by said defendant within thirty days from the date of this order and fully completed on or before the 1st day of September, 1913.

Said construction shall be of the type and character as that provided for track construction in the Amended Order entered and filed in Docket No. 3 of this Commission.

[SEAL.] ARIZONA CORPORATION COMMISSION.
W. P. GEARY, *Chairman;*
A. W. COLE,
F. A. JONES, *Commissioners.*

Dated this 23d day of June, 1913.

Attest:
FRANK DE SOUZA, *Secretary.*

23 Before the Arizona Corporation Commission.

Docket No. 84.

ARIZONA CORPORATION COMMISSION, Complainant,
vs.
PHŒNIX RAILWAY COMPANY OF ARIZONA, Defendant.

This cause coming on to be heard upon the defendant's petition for a rehearing of the opinion and order of this Commission heretofore made and entered, and the Commission after a careful consideration of the matters and things in said petition contained is of the opinion that the same should be denied.

It is therefore ordered that the defendant's petition for a rehearing in the above entitled cause, be and the same is hereby in all things denied.

It is further ordered that the original order in the above entitled cause dated June 23, 1913 be and the same is modified and changed to the extent that the defendant shall commence such construction on or before September 1, 1913 and shall have the same fully completed on or before December 1, 1913.

(Sgd.) ARIZONA CORPORATION COMMISSION.
W. P. GEARY, *Chairman;*
A. W. COLE,
F. A. JONES, *Commissioners.*

Dated at Phœnix this 12th day of August 1913.

Attest:
FRANK DE SOUZA, *Secretary.*

24 Due notice of the hearing of the application for a temporary restraining order is hereby accepted and consent is hereby given that said application may be heard before the Judge in Chambers on the *a*8th day of August at 11 A. M.

G. P. BULLARD,
Attorney General for Arizona,
By LEWIS T. CARPENTER.

Endorsements: In Equity No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., Defendants. Bill of Complaint. Filed Aug. 28, 1913. Allan B. Jaynes, Clerk, by Frank E. McCrary, Deputy.

25 UNITED STATES OF AMERICA:

District Court of the United States, District of Arizona.

In Equity. E-11.

The President of the United States of America to W. Paul Geary, Frank A. Jones, and Amos W. Cole, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Greeting:

You are hereby commanded that you be an- appear in said District Court of the United States, aforesaid, at the Court Room in Phœnix, twenty days from the date hereof, to answer a Bill of Complaint exhibited against you in said Court by Phœnix Railway Company of Arizona, which is a citizen of the State of Arizona, and to do and receive what the said Court have considered in that behalf.

Witness the Honorable William H. Sawtelle, Judge of the United States District Court, this 28th day of August, in the year of our Lord one thousand nine hundred and thirteen and of our Independence the 137th.

ALLAN B. JAYNES, *Clerk,*
By FRANK E. McCRARY, *Deputy.*

Memorandum Pursuant to Rule 12, Rules of Practice for the Courts of Equity of the United States.

You are hereby required to file your answer or other defense in the above suit, on or before the twentieth day after service, excluding the day thereof, of this subpœna, at the Clerk's office of said Court, pursuant to said Bill; otherwise the said Bill may be taken pro confesso.

ALLAN B. JAYNES, *Clerk,*
By FRANK E. McCRARY, *Deputy.*

United States Marshal's Return.

Received this writ Aug. 29, 1913, at Phœnix, Arizona, and executed the same as follows:

On Aug. 29, 1913, at Phœnix, Ariz., upon W. P. Geary, F. A. Jones, Clyde M. Gandy, Assistant County Attorney for Maricopa County, Arizona, and L. C. Hardy, Assistant Attorney General for Arizona, by delivering to each of them personally a true copy hereof.

I further executed this writ on Sept. 2, 1913, at Phœnix, Arizona, by delivering to G. W. P. Hunt, and A. W. Cole personally a true copy of this writ.

Returned this 3rd day of September 1913.

C. A. OVERLOCK,
U. S. Marshal,
By F. G. HUDSON, *Deputy.*

Marshal fees for service $24.00.

26 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Order.

This matter coming on to be heard before the undersigned in the city of Phœnix, Arizona, on the motion of Complainant's Solicitors that a time and place be set when and where there may be heard before three Judges, as provided by Section 266 of the Judicial Code, approved March 3, 1911, complainant's application for the issuance of a writ of injunction pendente lite, as prayed for in its bill of complaint herein; and that in the meantime and until further order herein in order to prevent great and irreparable loss and damage, the defendants, their and each of their successors be restrained from putting into effect, or continuing in effect,or from in any way enforcing or attempting to enforce or from instituting or causing to be instituted any action, suit or proceeding for enforcing a certain decision and order of the Arizona Corporation Commission dated June 23, 1913, which is set out in said bill of complaint, or on account of any right given or pretended to be given by said order against Complainant or any of its officers, agents or employes; and

It appearing that a bill of complaint herein was duly filed in the District Court of the United States for the District of Arizona on the 28th day of August, 1913, and from the further certificate of the clerk of said court that on the same day a subpœna was issued in accordance with the prayer of said bill; and

It appearing from said bill that the Arizona Corporation Commission has made an order dated June 23, 1913, which order provides that the complainant build and construct a double track line
27 of street railway over a certain part of its line, which said order will be effective and operative on and after the first day of September, 1913, and against the enforcement of the provisions of

said order relief is sought by Complainant in this suit, and a temporary injunction is prayed for as in said bill set forth.

It is ordered that the said application for a temporary injunction be heard at the court room of the District Court of the District of Arizona, in the city of Phœnix, on the 2nd day of October, 1913, at 9:30 A. M., before the undersigned and two other judges to be selected and designated by him according to law; and

It is further ordered that notice of said hearing and a copy of this order and of said bill and subpœna and of any affidavits the complainant may propose to use at said hearing, be served on the defendants, and especially on said defendant, George P. Bullard, Attorney General, and on the Hon. George W. P. Hunt, Governor of the State of Arizona, at least five days before said application is heard; and

It satisfactorily appearing by said bill and by the affidavits submitted on this application that irreparable loss and damage will result to the complainant before an application for a temporary injunction can be heard herein, unless a temporary restraining order be issued in accordance with the provisions of the judicial code of the United States, approved March 3, 1911,

It is further ordered that from and after service of a certified copy of this Order and a copy of said bill, the defendants and their and each of their successors and agents be, and each of them is, pending the hearing and determination of said application, restrained from in any manner enforcing or attempting to enforce the provisions of said order of said Commission, and from instituting or causing to be instituted any action, suit or proceeding against the complainant, its officers, agents, or employes for recovery of any penalties arising under or by virtue of said order or on account of any right given or pretended to be given thereby against complainant, or any of
28 its officers, agents or employes.

Provided, however, that a bond in the sum of $2,000.00 shall be filed forthwith.

Dated Phœnix, Arizona, this 28th day of August, 1913.

WILLIAM H. SAWTELLE, *Judge.*

We consent that the hearing herein be had on October 2nd, 1913, to follow hearing in Pacific Gas & Electric Co. suits.

CHALMERS & KENT,
Solicitors for C'pl't.
G. P. BULLARD, *Att'y Gen.,*
By LEWIS T. CARPENTER, *Ass't.*

Endorsement: In Equity. No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., Defendants. Order. Filed Aug. 29, 1913. Allan B. Jaynes, Clerk. By Frank E. McCrary, Deputy.

29 Endorsement: Marshal Docket No. 363. E-11. Ph'x Ry. Co., vs. W. P. Geary, et al. Subpœna in Equity. Filed Sept. 3, 1913. Allan B. Jaynes, Clerk. By Frank E. McCrary, Deputy.

30 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,

vs.

W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Notice.

To each of the defendants above named and to Honorable George W. P. Hunt, Governor of Arizona:

You are hereby notified that pursuant to an order made by Honorable William H. Sawtelle, United States District Judge in and for the District of Arizona, a certified copy of which order is herewith served upon you, the above named complainant will make application at 9:30 in the forenoon of the 2nd day of October, 1913, at the District Court of the United States in and for the District of Arizona at Phœnix, Arizona, for a writ of injunction, pendente lite, in accordance with the prayer of the bill of complaint filed in the above entitled cause, a copy of which bill is herewith served upon you; and that in support of said application complainant proposes to read said bill and those certain affidavits, copies of which are herewith served upon you, viz;

31 An affidavit sworn to by S. H. Mitchell, August 27, 1913.

Three affidavits sworn to by C. E. Newcomer, Aug. 28, 1913.

Two affidavits sworn to by J. P. Gould, Aug. 18, 1913.

Said certified copy of said order is also served upon you as a restraining order in pursuance of the terms thereof.

(Signed) CHALMERS AND KENT,
Solicitors for Complainant.

Dated Phœnix, Arizona, August 29th, 1913.

Endorsement: E-11. Notice to Defendants. Filed Aug. 29th, 1913. Allan B. Jaynes, Clerk. By Frank E. McCrary, Deputy.

32 In the District Court of the United States for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Order.

An order having heretofore been entered herein by the Honorable William W. Morrow, then presiding judge of this district, setting the application for the temporary injunction herein to be heard before three judges in the city of Phœnix on the 2nd day of October, 1913, and it appearing that it is impossible to secure the attendance of two other judges of the United States to sit with the undersigned upon said hearing in Phœnix upon said date, or at any other date in the near future,

It is Ordered that hearing upon the application for a temporary injunction herein be had before the undersigned and two other judges to be selected by him, at the United States Court rooms in the city of San Francisco, California, on the 17th day of November, 1913, at 10 o'clock A. M.

WM. H. SAWTELLE,
District Judge.

We hereby consent to the entry of the foregoing order.

CHALMERS & KENT,
Solicitors for Complainant.
G. P. BULLARD,
Solicitor for Defendants.

33 Endorsement: In Equity. No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., Defendants. Order. Filed Sept. 18, 1913. Allan B. Jaynes, Clerk.

34 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit of C. E. Newcomer.

STATE OF ARIZONA,
County of Maricopa, ss:

C. E. Newcomer, being duly sworn, deposes and says:
That he is the cashier of the Phœnix Railway Company of Arizona, complainant in this cause; that during the period from August 16 to August 23, 1913, he has had kept under his direction and supervision a record of the time at which the Washington street cars of the said company passed 7th Avenue, 15th Avenue, and 17th Avenue, respectively; that said record shows that during said period, with the exception of unavoidable delay occasioned by fire at the Darrows-Fooshe Furniture store on August 22d, and with the exception of one occasion where a small delay was caused by the derailing of a car, only once during said period was there a greater variation than three minutes from the scheduled 15-minute interval between cars; and there was no variation of more than four minutes from said interval during this period.
(Signed) C. E. NEWCOMER.

Subscribed and sworn to before me, this 28th day of August, 1913.
(Signed) J. L. GUST,
[SEAL.] *Notary Public in and for the County of Maricopa.*

My Commission expires February 21st, 1916.

35 Endorsements: E-11. Aff. C. E. Newcomer. Filed Aug. 29, 1913. Allan B. Jaynes, Clerk, by Frank E. McCrary, Deputy.

36 In the District Court of the United States in and for the District of Arizona.
In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit of C. E. Newcomer.

STATE OF ARIZONA,
County of Maricopa, ss:

C. E. Newcomer, being first duly sworn, deposes and says:

I am now and since April 15th, 1912, have been cashier of the Phœnix Railway Company of Arizona. From December, 1900 to February, 1912, I was cashier of the First National Bank of Riverside, California. I am familiar with the cost of operation of the Phœnix Railway Company of Arizona, complainant in this cause, and am also familiar with the amount of revenue accruing to said company. I have compiled a statement of the gross operating revenues of said Railway Company for the period from July 1, 1911 to July 1, 1912, and also for the period from July 1, 1912 to July 1, 1913, together with the gross operating expenses of said Railway Company during said periods, which statement I have attached hereto as an exhibit.

The gross operating revenues of said Railway Company during the period from July 1, 1911 to July 1, 1912, amounted to $101,153.61, while the gross operating expenses during the same period, not including anything on account of interest on the bonded indebtedness, amounted to $106,044.77, leaving a deficit for the said period of $4891.16.

37 The total operating revenue accruing to said Railway Company from July 1, 1912 to July 1, 1913 amounted to $112,124.51 and the total operating expenses during the same period amounted to $109,799.48, making a gain for said period of only $2,325.05. The deficit for the entire period from July 1, 1911 to July 1, 1913 was $2,566.13.

The interest on the bonded indebtedness during the period from July 1, 1911 to July 1, 1912, was $62,500 and the same amount for the period from July 1, 1912 to July, 1913. During these periods only $200.00 of this interest has been paid, and no dividends have been paid on the stock of said company.

The statement of earning and operating expenses hereto attached is illustrative of the earnings and operating expenses of said Railway Company. There has not been a return on the value of the property or on the capital invested in said Railway but for the most part the business has been operated at a loss. The property, exclusive of real estate, of said Company, was for the year 1913 assessed at 250,000 which is a low estimate of the value of said property. The operation of said railway system has not been renumerative and has not afforded and is not now affording an appreciable return on the value of said property.

I am familiar with the financial condition of the complainant company. Under a former order of the Arizona Corporation Commission it has been required to expend large sums of money. There is now no money in the treasury with which to construct the double track called for in the order of the Corporation Commission complained of in this cause, and the said Company is financially unable to install and pay for the work called for in said order.

(Signed) C. E. NEWCOMER.

38 Subscribed and sworn to before me, this 28th day of August, 1913.

(Signed) J. L. GUST,

[SEAL.] *Notary Public in and for the County of Maricopa.*

My Commission expires February 21st, 1916.

39 EXHIBIT.

Statement of Operating Expenses and Revenues.

	July 1, 1911, to 7-1-12.	7-1-12 to 7-1-13.
Engineering and Superintendence	80.00	.....
Maintenance of Way	27,369.17	23,543.26
Maintenance of Electric Lines	2,822.11	3,951.45
Maintenance of Cars	4,707.95	7,872.16
Maintenance of Elec. Equipment of Cars	7,170.24	5,338.03
Misc. Equipment Expense	39.65	228.50
Traffic Expense	211.91	355.55
Substation Employes	650.00	780.00
Conductor & Motorman	19,392.65	25,217.45
General Expenses	7,619.45	10,011.78
Power Account	17,014.15	17,762.25
Misc. Transportation Expense	2,005.34	1,806.83
Injuries and Damages	6,251.53	3,762.14
Insurance	229.80	448.25
Taxes	3,871.53	4,623.17
Stationery and Printing	511.65	194.67
Store and Stable Expense	579.00	1,154.88
Betterments	4,223.40	.....
Distribution System	.....	798.71
Superintending of Transportation	.....	1,090.00
Substation Expense	1,295.24	110.40
Interest	.....	750.00
	106,044.77	109,799.48
Earnings	101,153.61	112,124.51
Loss	4,891.16	.....
Gain	.....	2,325.03
Net loss for 2 yrs	2,325.03	.....
	2,566.13	

Endorsements: E-11. Filed Aug. 29, 1913. Allan B. Jaynes, Clerk, by Frank E. McCrary, Deputy.

In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit of C. E. Newcomer.

STATE OF ARIZONA,
County of Maricopa, ss:

C. E. Newcomer, being duly sworn, deposes and says:

I am now and since April 15, 1912, have been cashier of the Phœnix Railway Company of Arizona, complainant in this case. I have read Paragraph V of the Bill of Complaint herein. The figures there given of the gross operating revenues and the gross operating expenses for the year from July 1, 1911, to July 1, 1912, are correctly stated, to-wit:

Gross operating revenues	$101,153.61
Cost of operating	105,044.77

leaving a deficit for said year of $4,891.16. In this connection I desire to state that the report of the Company to the Corporation Commission for said year states the gross operating revenues for such period to be $113,947.92, and the operating expenses $97,-949.84. The Company has made application to the Corporation Commission for permission to file an amended and corrected return for such period in that the aforesaid figures given in said report are erroneous and incorrect in that in said amount of $113,947.92 given as the gross operating revenues, the sum of $12,794.31 is erroneously included as gross operating revenue, while in fact said sum
41 of $12,794.31 was made up of subsidies paid to the Company for extension of its lines and from other miscellaneous revenue forming no proper part of the operating revenues of said company, and further in that in said report in the amount of $97,949.84 given as the gross operating expenses, the sum of $8,-094.93 was omitted from operating expense, while in fact the same should have been included, to-wit: the sum of $4,223.40 which in said report was included for expenditures for road and should have been included in the maintenance of way account under operating expenses and the amount of $3,871.53 taxes which, in said report was included in the income account but should properly be chargeable to operating expense or in all said sum of $8,094.93.

(Signed) C. E. NEWCOMER.

Subscribed and sworn to before me this 28th day of August, 1913.

[SEAL.] (Signed) J. L. GUST,
Notary Public for Maricopa County.

My Commission expires February 21st, 1916.

Endorsements: E-11. Aff. C. E. Newcomer. Filed Aug. 29, 1913. Allan B. Jaynes, Clerk, By Frank E. McCrary, Deputy.

42 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit of J. P. Gould.

STATE OF ARIZONA,
County of Maricopa, ss:

J. P. Gould, being duly sworn, deposes and says:

From the year 1909 until February 1st, 1913, I was assistant engineer for the Pacific Electric Railway of Southern California: since February 1st, 1913, I have been and now am Chief Engineer for the Phœnix Railway Company of Arizona; I have carefully estimated the cost of constructing a second track on Washington Street from 7th Avenue to 17th Avenue as ordered by the Arizona Corporation Commission by its order dated June 23d, 1913; At a low estimate the cost of the construction of a second track between 7th and 17th Avenue- will amount to $13,725.32.

I have prepared an itemized statement of the cost of this work, a copy of which is attached hereto and marked "Exhibit A." Said statement is a very low estimate of the cost of this construction and the work can not properly be done for a less amount.

I have also estimated the cost of constructing said second track together with the cost of the additonal paving which would be required to be done by the complainant company because of
43 the construction of said second track in the event that west Washington street is ordered to be paved by the city of Phœnix. The cost of constructing said second track and of the additional paving which the complainant company would be required to do because of said additional track would at a low estimate amount to $23,978.15. An itemized statement of the cost of construction and cost of additional paving is marked "Exhibit B" attached to this affidavit.

(Sgd.) J. P. GOULD.

Subscribed and sworn to before me, this 28th day of August, 1913.

[SEAL.] (Sgd.) J. L. GUST,
Notary Public in and for Maricopa County.

My Commission expires February 21st, 1916.

44 EXHIBIT A.

Estimated cost of placing second track in West Washington Street—7th Avenue to the Capitol, inc. of 150 feet east of 7th Avenue in present paving. Excavation in this pavement lumped in at the same price as all remainder of excavation.

65# Relay Steel; New 6″ x 8″ x 8′ Rdw. Ties: "000" Overhead Trolley Wire.

1 SW & Mate X-over, manganesse center	500.00
1 Switch & Mate T-Out Complete	250.00
3 Sets Timbers for above at 35.00	105.00
9185 Lin. Ft. 65# Relay Rail, (88.9 T.), 35.00	31,111.50
(If 56# steel is used deduct $430.50)	
306 Prs. Angle Bar Joints, 1.10	336.00
12 Prs. Comp. Joints, 5.00	60.00
1224 Bolts, .05	61.20
1250 Nut Locks, .01	12.50
2226 6 x 8″ x 8′ Rdw. Ties, 1.00	2,226.00
38 Kegs, ½ x 5″ Track Spikes, 5.00	190.00
	6,852.20
3% Dep. Exp.	205.56
	7,057.76
2,296 Cu. Yds. excavation (18″ deep), .75	1,722.00
890 Cu. Yds. Ballast in Place, 1.35	1,201.50
Removing old siding & Spec. Wk.	50.00
Placing Spec. Wk.	105.00
4,592 Lin. Ft. Track Wk., .35	1,601.20
Team & Work Train Service	250.00
Culverts	100.00
Bonding Spec. Wk.	105.00
Bonding Straight track, 306 Joints, 1.00	306.00
	12,498.46
5% Eng.	641.59
	13,140.05
4442.6 Lin. Ft. "000" Trolley Wire	585.27
Total	13,725.32

45 EXHIBIT B.

Estimated cost of placing second track and paving said second track on west Washington Street, 7th Avenue to 17th Avenue, inc. of 150 feet east of 7th Avenue, in present paving. Excavation in this pavement lumped in at the same price as all remainder of excavation, 65# Relay Steel; New 6" x 8" x 8' Rdw. Ties "000" Overhead Trolley Wire.

1 SW & Mate X-Over, Mang. center	500.00
1 SW & Mate T-out comp	250.00
3 Sets Timbers for above, 35.00	105.00
9,185 Lin. Ft. 65# Relay Rail, 35.00 (88.9 T.) (If 56# steel is used deduct $430.50)	3,111.50
306 Prs. Angle Bar Joints, 1.10	336.00
12 Prs. Comp. Joints, 5.00	60.00
1,224 Bolts, .05	61.20
1,250 Nut Locks, .01	12.50
2,226, 6 x 8" x 8' Rdw. Ties, 1.00	2,226.00
38 Kegs ½ x 5" Track Spikes, 5.00	190.00
	6,852.20
3% Dep. Exp.	205.56
	7,057.76
2,296 Cu. Yds. Excavation (18" deep), .75	1,722.00
890 Cu. Yds. Ballast in Place, 1.35	1,201.50
Removing old siding & Spec. Wk.	50.00
Placing Spec. Wk.	105.00
4,592 Lin. Ft. Track Wk., .35	1,601.20
Team & Wk. Train Service	250 00
Culverts	100.00
Bonding Spec. Wk.	105.00
Bonding Straight track (306 joints), 1.00	306.00
5,749.76 Sq. Yds. Bit. Paving, 1.701	9,780.48
	22,278.94
5% Eng.	1,113.94
	23,392.88
4,442.6 Lin. Ft. "000" Trolley Wire	585.27
	23,978.15

46 Endorsements: E-11. Aff. J. F. Gould. Filed Aug. 29, 1913. Allan B. Jaynes, Clerk, by Frank E. McCrary, Deputy.

47 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit of J. F. Gould.

STATE OF ARIZONA,
County of Maricopa, ss:

J. P. Gould, being duly sworn, deposes and says:

I am now and have been since February 1, 1913, Chief Engineer for the Phœnix Railway Company of Arizona; I am familiar with the various street car lines of the said Railway Company and with the neighborhoods served by said lines. I have made a special study of the district served by the West Washington Street line of the complainant company. This district is of very limited extent, extending south of Washington Street only four blocks where are located the steam railroad tracks, and north of Washington street only three blocks, where is located the Salt River Valley Canal; the district served by said line lying west of the avenue is a very sparsely settled district and forms the outskirts of the city of Phœnix.

I have recently taken the census of the district extending from Ninth Avenue to Fifteenth Avenue, and bounded by the alley south of Madison Street on the south, and the Canal, as aforesaid, on the north, and have found the population of this district, above six years of age, not including the inhabitants of twenty houses at which I found no one at home, to be 404. Allowing three persons to each house at which I found no one at home, the total
48 population of said district, above six years of age, would be 464. In said district there were twenty-four vacant houses; thirteen automobiles are owned in said district. I have prepared a map of this district upon which every house in said district is marked, a copy of which said map is attached hereto as an exhibit.

I have also taken the census of the district bounded on the north and south as aforesaid, and extending from 15th Avenue west to 23d Avenue and found the population above six years of age of said district, not including the inhabitants of 27 houses at which I found no one at home, to be 562. Allowing three persons to each house at which I found no one at home as aforesaid, the total population of said district above six years of age, amounts to 643. In this district there were 44 vacant houses. 38 automobiles are owned in this district. I have also prepared a map of this district upon which the houses are marked and which map I attach hereto as an exhibit.

I am familiar with the amount of traffic on the west Washington street line of the Complainant Company and also with the character of service rendered by said Company. The traffic on said line is

CHARTS

TOO

LARGE

FOR

FILMING

light and the cars are not crowded. With the single track and switches now in use a prompt service is maintained and any substantial delays are rare, and with said single track and switches a prompt and efficient schedule can be and is easily rendered.

J. P. GOULD.

Subscribed and sworn to before me this 28th day of August, 1913.

[SEAL.] J. L. GUST,

Notary Public in and for Maricopa County.

My Commission expires February 21st, 1913.

49 Endorsements: E-11. Filed Aug. 29, 1913. Allan B. Jaynes, Clerk, by Frank E. McCrary, Deputy.

(Here follow diagrams marked pp. 49¼ & 49½.)

50 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit of S. H. Mitchell.

STATE OF ARIZONA,
County of Maricopa, ss:

S. H. Mitchell, being duly sworn, deposes and says:

I am now and since July 1, 1911, have been General Manager of the Phœnix Railway Company of Arizona, complainant in this cause. Prior to July 1, 1911, I was Manager of the Phœnix Railway Company which at that date was taken over by the present company.

I am familiar with the amount of traffic upon the various lines of said railway company and am familiar with the amount of traffic on the Washington Street line of said company and upon the portion of the Washington Street line west of 7th Avenue in the city of Phœnix. I am also familiar with the character of the service rendered by the complainant company upon said lines.

On the west Washington street line there is a very light traffic and on said line there has never been and is not now a congestion or density of traffic. The cars running on said line are not crowded and are very seldom more than half filled with passengers. On no part of the Washington street line has there been nor is there now a crowded condition of cars nor a congestion or density of traffic.

51 The service upon the Washington Street line and on the *and on the* western portion of said Washington street line is prompt and efficient; the 15-minute schedule as published by the complainant company and as ordered by the Corporation Commission is well kept up and there are no substantial delays. A 15-minute schedule on said line is a reasonable schedule and has been so considered by the Corporation Commission. If, however, a more frequent schedule is deemed necessary and reasonable it can easily be maintained by the Company.

During the month of May, 1913, under my direction and supervision a record was kept of the number of passengers on each car of the complainant company running on the Washington street line at the time said cars passed 15th Avenue and 17th Avenue respectively, together with a record of the time at which said cars passed said points. A record was likewise kept during said period of the number of passengers on the Washington street cars at the time of passing Second Street in the city of Phœnix. By these records it was found that the average number of passengers riding on said cars at 15th Avenue during the month of May aforesaid was approximately eight, and that the average number of passengers riding on said cars at 17th Avenue was less than four.

The seating capacity of said cars varies from 45 to 65. Only nine times during said month were there more than thirty passengers on any car when passing 15th Avenue and 17th Avenue, and only on one occasion during said month was any car crowded and this exception was due to a special meeting held at the State Capitol Building at 17th Avenue and Washington Street. As is shown by the average for said month far less than half of the seating space in said cars was occupied. By said record it was also proved that the 15-minute schedule is well maintained on said line. During said month of May the cars of the complainant on Washington Street
52 passed 15th Avenue more than 3500 times and also passed 17th Avenue more than 3500 times. Out of a total of more than 7000 times that the cars of the said Company passed these points, only 34 times was there a greater variation than three minutes from the 15-minute schedule interval between cars, and only four times was there a greater variation than four minutes from the 15 minutes interval. It sometimes happens that the power at the Pacific Gas & Electric Company plant is shut off, and this, and track repairing during the month, accounts for the few variations above mentioned.

By the record kept of the cars on the Washington Street line passing 2nd Street, which point is in the business section of the city of Phœnix where the line is double tracked, it was found that the average number of passengers riding on the cars at this point was less than five. The highest number of passengers on any car when passing 2nd Street during the month of May aforesaid was 34.

The month of May, 1913, was a month more favorable to the defendant and less favorable to the complainant than the average month owing to the fact that during said month the track on west Washington Street was undergoing repair. The traffic during said month was also greater than usual owing to the fact that during a part of said month the State Legislature was in session, thus causing additional traffic. Wherever any substantial delays have occurred they were for the most part caused by the power being shut off or by track repairing on Washington Street. The track of the complainant company is now in good condition and a prompt schedule is and can be easily maintained, and adequate and efficient service rendered.

I have read the affidavit of C. E. Newcomer attached to this motion and I endorse the statements made therein with reference to the financial inability of the complainant company to com-
53 ply with the order of the Corporation Commission complained of in this cause.

The order of the Corporation Commission complained of in this cause compelling the Complainant Company to double track said line, and to commence work thereon on September 1st, and to complete the work by December 1st, will, if its enforcement is not enjoined pending a decision of this cause, cause the complainant irreparable loss, as to comply with said order will necessitate the immediate expenditure of large sums of money for labor and materials for which no recovery can be had. On the other hand if the complainant company refuses to comply with said order and to make

the large expenditures required thereby it will be subjected to the heavy penalties prescribed for the violation of said order.

(Signed) S. H. MITCHELL.

Subscribed and sworn to before me, this 27th day of August, 1913.

(Signed) J. L. GUST,

[SEAL.] *Notary Public in and for Maricopa County.*

My Commission expires Feb. 21, 1916.

Endorsement: E-11. Aff. S. H. Mitchell. Filed Aug. 29, 1913. Allan B. Jaynes, Clerk, by Frank E. McCrary, Deputy.

54 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

Oril Snow, being first duly sworn, deposes and says:

From September 8th to October 5, 1913, I was employed as conductor on the west Washington street line of the Phœnix Railway Company of Arizona. During this employment I found the traffic on said line to be very light, most of the cars being far less than half filled, and the cars running frequently with no passengers at all. On this line the 15-minute schedule, which is a reasonable schedule, in force was well and promptly kept. From my experience I am convinced that with the trackage now in use, this 15-minute schedule can easily be maintained and that to maintain a more frequent schedule it would be necessary to double track this line. I found delays at the switch at 13th Avenue to be infrequent and short, and the cars on which I was employed almost without exceptions left the terminals on schedule time—almost all delays being the result of unavoidable causes such as the power being off from Roosevelt Dam.

ORIL SNOW.

Subscribed and sworn to before me this 5th day of November. 1913.

[SEAL.] J. L. GUST,
Notary Public.

My commission expires February 21st, 1916.

Endorsements: E-11. Affidavit Oril Snow. Filed Nov. 6, 1913. George W. Lewis, Clerk, by Frank E. McCrary, Deputy.

55 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY CO. OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

W. R. Allen being first duly sworn, deposes and says: I am now and have been for several months last passed employed as a conductor by the Phœnix Railway Company of Arizona. Since August 15, 1913, I have acted as conductor on the Washington Street line of said company.

During the time that I have been employed on the Washington Street line, as aforesaid, the traffic on the West Washington Street line has been light and there has at no time been a crowded condition of the cars on this line. A fifteen minute schedule is in operation on this line and this schedule is well and properly kept. With the trackage now in use a fifteen minute schedule can easily be maintained and without a double track a more frequent schedule if desired, can easily be maintained on this line. However, a 15 minute schedule is a reasonable schedule on this line. During my employment as conductor on the West Washington Street line I have had every opportunity to observe and note delays at the switch on 13th Avenue. Delays at this switch are infrequent and when they do occur they are of very short duration. With few exceptions, due almost entirely to power being off and other unavoidable causes, the cars on which I have been employed have run on schedule time, leaving both terminals at the appointed time.

W. R. ALLEN.

Subscribed and sworn to before me this 6th day of November, 1913.

[SEAL.] AGNES M. LERG,
Notary Public.

My commission expires October 21st, 1917.

Endorsements: E-11. Affidavit W. R. Allen. Filed Nov. 6, 1913. George W. Lewis, Clerk. By Frank E. McCrary, Deputy.

56 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

Charles Woolstenhulme being first duly sworn, deposes and says: Supplementing my affidavit subscribed and sworn to November 5th, 1913, on file herein, I desire to state that the power with which the cars of the Phœnix Railway Company of Arizona are run is purchased from the Pacific Gas and Electric Company which in turn obtains the power from the United States Government, the power being transmitted from the Roosevelt Dam which is located ninety miles from Phœnix. It frequently happens that the power thus obtained is off sometimes for a long period of time and at other times for a short interval. When the power is off the cars are unavoidably delayed; and when the power again comes on it is impossible for the cars immediately to return to the schedule time. Also during the period for which this record was kept owing to the strike of the Company's employees the cars were operated to a large extent by new and unexperienced employees and part of these few delays were thus ocasioned.

Other causes which in any street car system necessarily cause small delays easily account for the few and inconsiderable delays mentioned in my former affidavit and these inconsiderable delays would not be remedied by the construction of a double track on this line but so far as possible to be remedied, can be corrected without this construction.

CHARLES WOOLSTENHULME.

Subcribed and sworn to before me this 11th day of November, 1913.

AGNES M. LERG,
[SEAL.] *Notary Public.*

My commission expires Oct. 21, 1917.

57 Endorsements: In Equity No. E-11. Pheonix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., Defendants. Chas. Woolstenhulme, Affidavit for complainant. Filed Nov. 11, 1913. George W. Lewis, Clerk, By Frank E. McCrary, Deputy.

58 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY CO. OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

J. P. Gould, being first duly sworn, deposes and says: I am chief engineer for the Phœnix Railway Company of Arizona and am the same J. P. Gould whose former affidavits subscribed and sworn to August 28, 1913, are on file in this cause. I have read the affidavit subscribed and sworn to by C. R. Price. From such affidavit I find that Mr. Price in estimating the population of the district which he considers contributory to the West Washington Street line finds in this district that there are 53 vacant houses for which Mr. Price has allowed a population of 3 persons to each house. I believe that in computing the population no allowance should be made for vacant houses. The district considered by Mr. Price is also greater than that canvassed by myself to the extent of the territory south of the alley south of Madison Street. The canvass of the district described in my former affidavit was carefully made and does I believe represent the population of this district.

J. P. GOULD.

Subscribed and sworn to before me this 5th day of November, 1913.

[SEAL.] AGNES M. LERG,
Notary Public.

My Commission expires Oct. 21, 1917.

Endorsement: E-11. Affidavit J. P. Gould. Filed Nov. 6, 1913. George W. Lewis, Clerk, by Frank E. McCrary, Deputy.

59 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit of D. C. Showers.

STATE OF ARIZONA,
County of Maricopa, ss:

D. C. Showers, being first duly sworn, deposes and says:

From October 1 to October 15, 1913, I was employed as conductor on the Washington street line of the Phœnix Railway Company of Arizona. During this period I found that there was but a light traffic on the west Washington street line, and there was never a crowded condition of the cars, the cars being for the most part much less than half filled, and frequently running without any passengers whatever.

From my experience on the Washington street line I am convinced that a 15-minute schedule can be maintained without any difficulty, and that it would easily be possible to maintain a more frequent schedule if necessary without double tracking. During my employment on this line the 15-minute schedule in operation was well and promptly kept up. While running on the west Washington line I was able to observe and note any delays at the switch at 13th Avenue. Delays at this switch are very infrequent and are seldom of any appreciable duration. The cars on which I was employed on this line, with very few exceptions, left the terminals on scheduled time.

D. C. SHOWERS.

Subscribed and sworn to before me this 5th day of November, 1913.

[SEAL.] AGNES M. LERG,
Notary Public.

My Commission expires October 21st, 1917.

Endorsement: E-11. Affidavit D. C. Showers. Filed Nov. 6, 1913. George W. Lewis, Clerk. By Frank E. McCrary, Deputy.

60 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

W. B. Trent, being first duly sworn, deposes and says;

I am now employed by the Phœnix Railway Company of Arizona as conductor, and during the period from August 15, 1913, to September 30, 1913, I acted as conductor on the west Washington Street line.

During this period it was my observation that there was no congestion of traffic on this line, and that the number of people riding on the west Washington Street line was very small. A 15-minute schedule is in force on this line and was promptly kept, so far as I was able to observe. This schedule is a reasonable schedule and sufficient to properly serve the people using this line. From experience I am able to state that with the trackage now in use on this line a 15-minute schedule can easily be maintained and that without double tracking this line there would be no difficulty in maintaining even a more frequent schedule.

While employed on this line I had opportunity to observe and note whether or not any delays occurred at the switch at 13th Avenue. Delays at this switch were infrequent and what delays there were were very brief. The cars on which I was employed on this line, with very few exceptions, ran on schedule time.

W. B. TRENT.

Subscribed and sworn to before me this 5th day of November, 1913.

[SEAL.] J. L. GUST,
Notary Public.

My Commission expires February 21, 1916.

61 Endorsement: E-11. Affidavit W. B. Trent. Filed Nov. 6, 1913. George W. Lewis, Clerk. By Frank E. McCrary, Deputy.

62 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit of S. R. Hodges.

STATE OF ARIZONA,
County of Maricopa, ss:

S. R. Hodges, being first duly sworn, deposes and says:

I am now, and have been for several months, a conductor for the Phœnix Railway Company of Arizona. Between August 15th and September 30th, 1913, I was employed as conductor on the Washington Street line of this Company.

While being so employed I have been able to observe the kind of service rendered on the west Washington Street line. It has been my observation that the 15-minute schedule now in operation was well maintained during this period, on the west Washington Line. I am able to state, from my experience as conductor on this line that with the trackage now in use a 15-minute schedule can easily be maintained, and that if desirable, there would be no difficulty without double tracking this line, in maintaining a more frequent schedule.

A 15-minute schedule is, however, adequate to serve the people using this line. The traffic on the west Washington Street line during this period was light, as there was not a crowded condition of cars. During my employment as conductor, delays at the switch at 13th Avenue seldom occurred, and when they did occur were inconsiderable. It was my experience that the cars on the Washington Street line were run very closely to schedule time.

S. R. HODGES.

Subscribed and sworn to before me, this 5th day of November, A. D. 1913.

[SEAL.] J. L. GUST,
Notary Public.

My Commission Expires Feb. 21, 1916.

63 Endorsement: E-11. Affidavit S. R. Hodges. Filed Nov. 6, 1913. George W. Lewis, Clerk. By Frank E. McCrary, Deputy.

64 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit of C. E. Newcomer.

STATE OF ARIZONA,
County of Maricopa, ss:

C. E. Newcomer, being first duly sworn, deposes and says:

I am now and for more than a year last past have been cashier of the Phœnix Railway Company of Arizona, complainant in the above entitled cause.

In the statement submitted by me with a former affidavit on file herein, no allowance was made for depreciation of the company's property excepting an allowance of $1,177.70 for substation depreciation, and an allowance of $5,000.00 for car depreciation. I have read the affidavit of W. Sangster subscribed and sworn to October 25th, on file herein. In the statement of expenses and revenues submitted by me no allowance is made for depreciation. Objection is made, however, to the allowance of the two items of depreciation contained in the statement submitted by me.

An allowance of 5% per annum upon the value of the company's property subject to depreciation is a very low amount to allow for depreciation. The assessed value of the company's property is $250,000.00, which is a very low estimate of the value of this property. Of this $250,000 valuation more than $200,000 thereof is subject to depreciation. Allowing 5% for depreciation on this property there would be for deduction from the earnings the sum of $10,000 per annum. Eliminating, therefore, the items of
65 depreciation contained in my former statement and allowing for annual depreciation this very low sum of $10,000 per annum, we would have, even according to the statement submitted by Mr. Sangster a deficit of operating expenses over operating revenues of almost $8,000.00 for the period from July 1, 1911 to July 1, 1912, and for the year from July 1, 1912 to July 1, 1913, a net loss of almost $500.00.

C. E. NEWCOMER.

Subscribed and sworn to before me, this 6th day of November, 1913.

[SEAL.] AGNES M. LERG,
Notary Public in and for Maricopa County.

My commission expires October 21st, 1917.

Endorsement: E-11. Affidavit C. E. Newcomer. Filed Nov. 6, 1913. George W. Lewis, Clerk. By Frank E. McCrary, Deputy.

66 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit of S. H. Mitchell.

STATE OF ARIZONA,
County of Maricopa, ss:

S. H. Mitchell, being first duly sworn, deposes and says:

I am General Manager of the Phœnix Railway Company of Arizona, complainant in this cause, and am the same S. H. Mitchell who made the previous affidavit on file herein, said affidavit having been subscribed and sworn to August 27, 1913.

I have read the affidavit of George P. Bullard, Attorney General, of the State of Arizona on file in this cause. I am well acquainted with the services rendered upon the lines of the Phœnix Railway Company of Arizona, and especially with the service rendered upon the west Washington street line. An efficient and prompt service has been and is now being rendered on said line to the people using the same. The record kept during the month of May of this year shows that a prompt schedule is maintained, and that there is no crowded condition on the cars on this line. Similarly, the record kept for the past several months shows that delays are infrequent and inconsiderable—that over 98% of the cars of the complainant company during the month of September left the terminals on time, thus demonstrating that with the single track and the switches now in use, adequate service is being afforded. Although the traffic on the west Washington street line is light, and there is no difficulty in maintaining a 15-minute schedule, or even a more frequent schedule without the double trackage ordered, if an additional switch is considered necessary it could easily be installed.

67 The population of Phœnix is given in Mr. Bullard's affidavit as 25,000. The census for the year 1910 shows a population of 11,134. Although no census of the city has recently been taken, your affiant is convinced that the increase in population has not been as stated by Mr. Bullard, and that the population of the city is little, if any, more than 15,000.

Your affiant has also read the affidavit of Mr. W. Paul Geary, Chairman of the Arizona Corporation Commission filed in this cause. The new cars for the Washington Street line are now en route, having been shipped from St. Louis, and at the time this matter is being heard by this court, the new cars will be in operation on Washington street.

Your affiant attended the hearing before the Arizona Corporation Commission held June 16, 1913, of the case designated by said

Commission as Docket 84, as a result of which hearing the matter complained of in this cause was made.. In my opinion the affidavit of Mr. Geary is not borne out by the evidence produced at the hearing before the Commission, and in order to have the whole matter before the court, I attach hereto as an exhibit a transcript of the evidence introduced at this hearing as recorded and certified to by J. M. Phillipowski, official reporter for the Arizona Corporation Commission. I heard all the evidence introduced at that time and the attached transcript is a true and correct transcript of the evidence introduced at said hearing.

S. H. MITCHELL.

Subscribed and sworn to before me, this 5th day of November, 1913.

[SEAL.] AGNES M. LERG,
Notary Public.

My commission expires October 21st, 1917.

68 EXHIBIT.

Before the Arizona Corporation Commission.

Docket No. 84.

ARIZONA CORPORATION COMMISSION, Plaintiff,
vs.
PHŒNIX RAILWAY COMPANY OF ARIZONA, Defendant.

Transcript of Evidence.

Hearing: June 16, 1913.

J. M. Phillipowski, Official Reporter, Arizona Corporation Commission.

Filed Jun- 19, 1913.

69 Before the Arizona Corporation Commission.

Docket No. 84.

ARIZONA CORPORATION COMMISSION, Plaintiff,
vs.
PHŒNIX RAILWAY COMPANY OF ARIZONA, Defendant.

Present:

Commissioners W. P. Geary, Chairman; A. W. Cole.

Appearances:

Geo. P. Bullard, Attorney General, representing Arizona Corporation Commission.

Messrs. Chalmers & Kent, representing Phœnix Railway Company of Arizona.

Transcript of Evidence.

Hearing: June 16, 1913.

JAMES P. BATES, being duly sworn on behalf of the Commission, testified:

Chairman GEARY: Your name is what?

A. James P. Bates.

Q. Where do you live?

A. Upon Willetta Street, East Willetta.

Q. What is your business?

A. Bailiff of the Supreme Court.

Q. You are employed here in the Capitol building?

A. Yes, sir.

Q. You have had occasion in your business daily, or approximately daily to use the street car lines of the defendant company?

A. Yes, sir, I pass over the line four time- a day, going and coming twice a day.

Q. What has been your experience regarding delays and waits upon the West Washington line?

70 A. Sometimes it has been convenient and sometimes it is not so bad. At times I miss my connection. It is not very good.

Q. Go ahead Captain and tell us what fault you have to find?

A. Sometimes there is a delay, causing me a little inconvenience down here at this switch. The cars don't meet I have a certain time to get here and sometimes it inconveniences me. I have had to get off the car and walk.

Q. Have you spent much time in that sidetrack down there?

A. Yes, sir, I have, sometimes when I felt I was not going to get here on time I would get off and walk.

Q. About where is the switch located?

A. It is this side of the Library, about four or five blocks from here.

Q. On the West Washington line?

A. Yes, sir.

Q. And the delay has been caused rather by the cars not meeting there?

A. Sometimes the cars don't meet and if there is not one in sight, I have once or twice walked.

Mr. COLE: The car has to wait there for the other car to pass?

A. Yes sir.

Q. If there is a delay, if you are coming toward the capital and there is a delay in the car above the capitol, this car has to wait at the switch?

A. Yes, sir, until the other car comes down.

Q. You have had to get off and walk to the capitol?

A. Yes, sir.

Q. Beat the car up here?

A. I have, I remember once or twice I came on before it got here.

Another time the car passed when I was in the yard and went on and had gone on toward the switch and I followed down and overtook it on the switch.

Q. You have to reach the capital at a given hour in the morning?

A. Yes, sir.

Q. How much time do you give yourself from home up here?

A. I ought to come here in about 30 minutes, but I don't do it. Sometimes I am delayed at the end of the Brill line, the cars don't make connections.

71 Q. How much time do you usually give yourself to get up here?

A. I give myself,—I always give myself about an hour, to be sure.

Q. You can walk it in much less time than that?

A. I can, but I don't enjoy that.

Q. I know, but you could walk it?

A. Yes, sir.

Q. What effect would double tracking West Washington to the capital have?

A. Well, it appears to me,—I am not a railroad man, but it appears to me if it was doubled tracked, we would not have the delays at the switch.

Q. The cars could continue on to their destination?

A. Yes, sir. The Service on the Brill line has been much better,——

Q. We don't care about that at this time.

A. Well, I travel on that road.

Q. West Washington is doubled tracked to Seventh Avenue?

A. Yes, sir.

Q. And from Seventh Avenue to Thirteenth Avenue it is a single track line?

A. Yes, sir.

Q. Then there is a switch there?

A. Yes, sir.

Q. Between Thirteenth and Fourteenth Avenues?

A. Yes, sir.

Q. And this switch is where the cars pass?

A. Yes, sir.

Q. And when the car gets on the switch it has to wait until the other car passes before it can continue its passage?

A. Yes sir, I know it does wait there.

Mr. BULLARD: How long a wait does it make?

A. Well, it varies, some times they don't wait at all; some times they pass right along, and at other times the other car may not be in sight up this way,—I don't remember about it being out of sight the other way, but some times about Seventh Avenue there is a car off the track or something of that sort and there would be a delay on that account, but not very often. I have seen that not a great while back, there was a car off the track

72 there, but the delays seem to be caused from this end.

Q. You think if a double track is put in they can ex-

pedite the service between the center of town and this end of the track?

A. Yes, sir. I think so.

Q. How is the traffic on the cars? Light or heavy?

A. It is very good, there is a right smart traffic on the cars. I think if they had a double track they could use more cars, they would not be in one another's way.

Q. Think a double track would cause more traffic?

A. I think so. They would not be standing waiting, but would be going, they would be running all the time.

Q. That is all you know about this?

A. Yes, that is all I know.

Cross-examination.

Mr. CHALMERS: You say delays are caused down this way, you mean beyond the capital?

A. That car is *our* of sight oftener. I could not say this other car has ever been out of sight unless it was stopped by another car that was off the track.

Q. You mean the car coming from the west is out of sight?

A. Yes.

Q. If it was in front of the capital you could see it?

A. Yes, sir.

Q. Then if it is out of sight it is west of the capital.

A. Yes.

Q. The last three months how often have the cars been delayed up here at the switch?

A. I could not tell you. The worst delays were back during the time it was raining. I know one morning it was muddy,—my attention was called to it because I walked from here and overtook the car.

FRANK HILDERBRAN, being duly sworn on behalf of the Commission, Testified:

Mr. BULLARD: Where do you reside?

73 A. 1820 West Washington.

Q. You have occasion to ride up and down on the cars operated by the defendant company on Washington Street?

A. Yes, sir.

Q. What complaint have you to make of the service, if any?

A. It is slow, all I can say.

Q. In what respect?

A. I prefer to walk usually.

Q. Where does the delay come in, are the cars usually on schedule time?

A. Yes, but I can walk down pretty nearly as quick as the car comes down, so I walk.

Q. What is that caused by?

A. I am sure I don't know.

Q. Have you noticed where the switch is?

A. Yes, sir.

Q. How long do you have to wait there as a general rule?
A. Well, it depends upon the conditions. Some times you have to wait quite a long time and at other times you don't wait at all. If I am in a hurry I would call something besides the street car to get down town.
Q. If the car you are supposed to meet is not on time you have to wait at the switch until it does arrive?
A. Yes, sir or walk.
Q. How often do you ride up and down?
A. I don't ride very often.
Q. How often would you say one car meeting the other is obliged to wait there?
A. Lately I haven't been using the cars enough to know much about it.
Q. Well, when you were using them?
A. I should say about nine times out of ten the car will have to wait, some times while I was using the car they would beat ft down to Seventh Avenue and pass the other car there.
Q. If there was a double track do you think it would obviate that delay?
74 A. I should think so.
Q. How is the traffic on West Washington, fairly good?
A. It is good, according to the way I look at it; it is much better than it has ever been. The few times I have ridden down the cars have been crowded.
Mr. COLE: Is the West end of the City growing rapidly?
A. Yes, sir.
Q. As compared with other parts of the City?
A. I don't know as compared with other parts of the City, but it is growing rapidly in my estimation. I may not be a judge of it.
Q. You don't ride the cars much, why don't you?
A. I walk usually.
Q. Why?
A. I enjoy the walk better than riding on the car, it is not so much the delays, but except one car running out here, it is really not an enjoyable proposition.
Mr. BULLARD: We hope some time to get some new cars here.
A. Perhaps I might be induced to ride on them then.

Cross-examination:

Mr. CHALMERS: You own a machine?
A. No sir.
Q. You say you walk for exercise?
A. Yes, There are two classes of exercise, one is riding on the street cars and the other is walking.
Q. You prefer walking?
A. I prefer to walk.
Q. Your real reason is not the proposition of double tracking, but,——
A. I prefer to walk.

Q. You prefer to walk rather than ride on the character of cars the Company now has?

A. That is the idea.

Q. You say the few times you have ridden the cars have been crowded?

A. Yes.

75 Q. Remember when was the last time you rode?

A. Yes, sir, Sunday morning, not yesterday morning, but Sunday a week ago. The last time I rode, if I remember, the car was crowded.

Q. Remember what time it was and where you were going?

A. Going down town. It was about half past ten.

Q. About church time?

A. Yes sir.

Q. Did you get a seat or stand up?

A. I stood up.

Q. No room to sit down?

A. No there was not. The car was crowded with ladies and there was no room to sit down; that was one reason, church time I presume.

Q. Is it your observation that the cars are ordinarily crowded going up and down Washington Street?

A. Not overly crowded, but they are pretty well filled.

Q. Not overcrowded?

A. No, there is generally room.

Q. Room to sit down?

A. Yes, sir, of course there are times when they are fairly crowded.

Q. Know what the service is, how many minutes there are between cars?

A. No sir, I could not say.

Q. Were there any seats left in that car at all that Sunday morning?

A. No sir, I think there were about 35 or 40 people on the car. In the neighborhood of 35.

Q. Don't know exactly?

A. I just noticed the register.

Q. Know the number of the car.

A. No.

Q. Were you inside the car?

A. Yes sir,—No, I was not inside the car; I was standing on the platform.

Q. Didn't you go in and look for a seat?

A. No, sir, I could not get in.

Q. What time did that car leave the switch, 10:30?

76 A. I don't know as to that: it was about that time.

Mr. COLE: You think if the street car company should double track from Seventh Avenue to Tenth Avenue it would tend to increase the efficiency of the service?

A. I should think so. My idea of the proposition would be to have better cars than to double track.

Mr. CHALMERS: You think they could get along without double tracking if they had better cars?

A. Yes, sir.

Mr. COLE: If they had brand-new cars, and there was this delay at the switch waiting for the other car, the efficiency of the service would be bad?

A. Certainly.

Mr. COLE: Regardless of the character of the cars?

A. You could make the switch better if you had cars that ran better that is my idea of it.

Chairman GEARY: Are you a Member of the City Council?

A. No sir.

ELMER WARREN, being duly sworn on behalf of the Commission, testified:

Q. You are a member of the City Council?

A. Yes sir.

Q. What do you know about the traffic on this West end of the Washington line?

A. Kinder bum in my estimation.

Q. You mean the service or the track?

A. I mean the service.

Q. In what way?

A. Well, if you want to go down town, if you happen to miss a car you can walk for a mile before you catch another.

Q. What causes that?

A. You can generally see a car lying in the switch and you can walk to Fourth Avenue and beat it down.

77 Q. Is that a usual or unusual occurence?

A. Pretty nearly a usual occurence?

Q. And the delay in traffic is caused in your opinion by the fact that they haven't got a double track and one car has to wait until another comes along?

A. Absolutely.

Q. What is the extent of the traffic on West Washington?

A. I could not say what the extent of the traffic is on the West end, but it looks to me, from observation, that it is very good.

Q. Cars are fairly well filled all the time?

A. Ordinarily so, yes sir.

Q. And morning, noon and night are they crowded or not?

A. I don't ride the cars in the morning; I ride at noon and in the evening.

Q. How is it then?

A. Fairly well filled, some times they are crowded.

Q. Think then if there was a double track on West Washington it would obviate this delay?

A. I do, yes sir. When you can come to Seventh Avenue and then walk to Fourth Street and beat the car there must be something bum with the service.

Cross-examination.

Mr. CHALMERS: Suppose they had a fifteen minute service on that track and kept it up promptly, would you consider that fairly efficient service at the present time?

A. That is supposed to be what they have now, but they havn't got it.

Q. I understand, but suppose they were to have it and maintained it promptly?

A. It would be better than it is now.

Q. Would you not consider that efficient service?

A. It might be better.

Q. You can answer that question, whether that would be efficient service?

A. It would be better service than they have today.

Q. Suppose they had a fifteen minute service, in your opinion would that be efficient service?

A. I would consider it better service than we have now.

Q. You understand the English language, Mr. Warren and can answer that question; suppose they had a fifteen minute service and maintained it, would you consider that efficient service?

78 A. No, I really would not say it would be.

Q. Suppose they had a seven and a half minute service on that line and maintained it, would you consider that efficient service?

A. Yes, sir, I believe I would.

Q. How many times have you had to wait there at the switch in the last three months?

A. Well, I have waited there more times than I have caught the car.

Q. In the last three months?

A. Yes sir.

Q. Know how many times the cars pass that switch every day?

A. They are supposed to pass every fifteen minutes according to their schedule. I never kept any tab on it; that is not my line of business.

Q. Would you be surprised if I told you there were eighty cars that pass that switch?

A. No sir, it would not surprise me. I would believe it if you told me that, but I don't believe it is a good service when you can walk to Seventh Avenue and see a car standing on the switch.

Q. The service you are complaining about could be readily remedied by prompt service on the part of the cars going to and from town and meeting at the switch, would it not?

A. I don't believe we get it when a car stands on the switch ten or fifteen minutes.

Q. I asked if they met promptly, the service would be better?

A. I suppose so.

Mr. BULLARD: If they had a double track they would not have to have those waits?

A. I don't see any reason for the waits.

Mr. COLE: Do you believe it is possible to maintain a fifteen

minute service with this switch and with the cars having to pass there?

A. I don't believe they can with the class of cars they have to-day.

Q. Suppose they get brand-new cars?

A. I don't believe they can do it then?

Q. If there is a delay on any part of the line it affects all the cars, throws the schedule off?

79 A. Absolutely. I have seen a car coming from the east and a car coming from the west and the crew would consult whether they could pass at Seventh Avenue and they generally doubt that they can do so and they would hold a car load of people on that switch until the car came from Fourth Avenue to Thirteenth Avenue; that is a regular occurrence.

Mr. CHALMERS: If they had another switch half way between those points would it remedy the matter?

A. The chances are it would.

Q. Don't you feel quite positive it would be quite a step?

A. I think a double track would be better.

Q. I understood that, but——

A. But another switch is bound to help.

Q. What is your interest in this double tracking?

A. My interest?

Q. Yes?

A. Just as a citizen of Phœnix.

Q. Are you advocating the double tracking?

A. I believe it should be done.

Q. Why?

A. Because I believe they need it.

Q. Is it not a fact that you are advocating double tracking because you want to see the street paved and want to see the Street Car Company pay more than it would otherwise in paving?

A. No sir, it don't make any difference to me.

Q. You haven't any desire to compel the street car company to double track because it would pay a larger proportion of the paving?

A. No sir, not a bit.

Q. Who have you talked to in regard to this double tracking?

A. I hav-n't talked to anybody that I know of.

Q. Talked with any paving company?

A. No sir, there have been lots of them asked us why we don't order the paving done, and we said we could not order it until we found out about the street car line.

80 Q. Now mention a few who asked you why you didn't order the paving?

A. I would not try to do so. It is general talk all over the town.

Q. I am talking about people interested in paving who have talked with you?

A. No sir, not one.

Q. Not one?

A. They have probably been at the City Council and wanted that street paved, but the City Council to date hasn't seen fit to order the street paved.

Q. What is your attitude, to order it paved?
A. There is no attitude, the City Council——
Q. Your individual attitude?
A. I don't have to answer that.
Q. You can answer it?
A. I want to see any street paved.
Q. What is your attitude about paving Washington Street?
A. I want to see Washington paved, the same as any other street.
Q. Do you want to enforce this West end paving?
A. Any time the people come in there with the proper petition, we will pave the street.
Q. Suppose part of the people petition for it and a portion of the people oppose it?

Mr. BULLARD: I don't think a member of the City Council should be forced to answer how he would vote on that proposition.
Mr. CHALMERS: You want to bring out everything on one side and nothing on the other.
Mr. BULLARD: No sir, but I don't think that has anything to do with this question, how he votes on paving.

A. Let him put this question, I will answer it, if I want to.

CHARLES E. MCELROY, being duly sworn, testified:

Q. What is your business?
A. Real estate.
Q. As such are you familiar with real estate conditions throughout the city?
81 A. Yes sir.
Q. What has been the approximate growth of this section of the City in here during the last year?
A. The last year, the last two years the growth in the west part of the city in proportion to the territory, north and south of Washington has been equal to the growth of the north part of the town.
Q. Is it a rapidly growing community?
A. Yes, sir.
Q. And continuing as such?
A. Yes sir.
Mr. COLE: In excess of the east part of town?
A. Yes sir.
Q. Where do you live?
A. 512 East Roosevelt.
Q. You don't travel much in this part of the town.
A. No sir.

Cross-examination:

Q. How many houses have been built here, how many going up a day?
A. Off-hand I could not say how many are going up a day, but I suppose in this section there has been, there must have been

somewhere around 75 houses built in what I call the territory served by the Washington Street car in the last year and a half.

Q. What would you call that territory, just bound it in a rough sort of way?

A. It will take in practically everything beyond here in the City Limits, the people for a radius West from 12th Avenue and people about a mile south of here. The Washington Car carries a great many people who ride as far as they can and then walk the balance of the distance, and it embraces the people in the Capital Addition and beyond that. Occasionally I go out in an automobile beyond the Capital to show property to people and in my line of business I like to get acquainted with everybody and I find many people who live beyond the City Limits who use the car as far as they can and then walk the balance of the way.

82 Q. You had in mind a district say with the Capital, this building as the center running a mile south and then north to the Yuma Road and a mile and a half West?

A. Yes, and even north of the Yuma Road.

Q. That is the section you have reference to?

A. Yes.

Q. And in that section you say about 75 houses have been built in the past year and a half?

A. Yes sir, that is a rough estimate, it may exceed that.

Q. And it might possibly be less than that?

A. Yes sir.

JESSE L. BOYCE, being duly sworn on behalf of the Commission, testified:

Q. Your name is Jesse L. Boyce?

A. Yes, sir.

Q. What is your business?

A. Clerk, Secretary of the Tax Commission.

Q. Where do you reside?

A. 1654 or 1642 West Monroe.

Q. That is an area immediately continuous to and being served by the Phœnix Street Railway?

A. Yes sir, Washington line.

Q. What complaint, if any, have you to make regarding the congestion of traffic and service occasioned thereby on the West Washington Street line?

A. Well, I never made any complaint, but I think it would be much better if they either had more cars or would double track from Seventh Avenue.

Q. Have you occasion to use the cars regularly?

A. Well, I go down town two or three times a week in the evening and sometimes in the day time on business connected with the Commission.

Q. What experience if any have you had with reference to waits in this switch or side track at Thirteenth Avenue?

A. Well, it seems invariably, especially during business hours,

the waits are very long, ten or fifteen minutes, sometimes half an hour at that Switch at 13th Avenue.

83 Q. You think that might be obviated by double tracking?

A. Yes sir, it would to a large extent. I remember one night, I think in January or February, a woman was thrown from the car, I think at that switch, the car was going on and she thought it was going to wait on the switch for the other car; if there had been a double track she would have known the car was not going to stop until it came to the corner.

Mr. CHALMERS: She expected to get off at the corner and got off at the switch before she got there?

A. Yes.

Mr. CHALMERS: Accidents will happen.

A. Yes, sir, but it is a sort of habit with people, they will get off at the switch instead of waiting until they reach the corner.

Mr. BULLARD: How is the traffic up this way?

A. It is very good, I think, so far as I know. It seems the traffic would warrant a double track.

Mr. COLE: Do you think if there was a double track it would increase traffic?

A. I certainly do. I think it is preventing this district from building up on account of the car service. If you doubled tracked there would be more people coming into this section.

Q. And they would depend upon the cars more?

A. Yes, sir.

Cross-examination:

Mr. CHALMERS: Suppose we put in a seven and a half minute service and the Commission makes it its business to see that the cars are kept on time, that would remedy it?

A. I don't think so. If you had more cars you would have more waits. Of course the cars are supposed to run on schedule time but if you have more cars on the line, using the switch, there will be more waits.

Q. Had any experience railroading?

A. None whatever.

Q. Could you tell whether or not if more cars were put on and a little more efficiency used whether or not it would remedy the situation?

84 A. No sir, I have had no experience in that line.

Mr. COLE: Think if a fifteen minute service could be maintained it is sufficient?

A. With a double track?

Mr. COLE: Yes sir?

A. Yes, because the cars would run right through and there would be no delays.

Mr. CHALMERS: That was not Mr. Cole's question,—he said if a fifteen minute schedule was maintained and there was no delays, would that be sufficient?

A. Yes, sir, but I think that is impossible.

Mr. COLE: Think it is impossible to maintain a fifteen minute service with a single track?

A. Of course I hav-n't had experience, but from my knowledge of the facts and from looking around, I know there are many interruptions.

Mr. CHALMERS: Remember the date of this particular delay of 30 minutes?

A. No sir.

Q. How long ago was it?

A. Four or five months back.

Q. Have you had any heavy delays in the last three months?

A. Yes, on one occasion I remember, about a month ago, might have been two months,—the car I was on expected to go through and had left the switch and gone on quite a distance, and then the other car, going west, came in and we had to back back about five or six blocks into the switch to allow the westbound car to pass; instead of the other car going back to Seventh Avenue we had to back in to the switch. There have been several other occasions, two or three instances, I know of.

Q. In the last three months remember any other occasions?

A. Not over five or ten minutes, of course one does not pull their watch and time it.

Q. That was caused in some way by the failure of the men to meet at the switch?

85 A. Yes, sir, and I think during the last month, I think when I have been on the cars we have had delays of about ten to fifteen minutes.

Commission rests.

Defendant's Testimony.

S. H. MITCHELL, being duly sworn on behalf of the Defendant, testified:

Mr. CHALMERS: The record may state that Mr. Mitchell is the manager of the Street Railway System and has been manager for several years past and is competent to testify as an expert on the street railway service.

Q. Go ahead and state the situation as you see it Mr. Mitchell?

A. I have before me statements covering three months made by the conductors on each of the cars on the Washington Division, showing the time passing the different stations, for instance on the Westbound it would show 9th Street, 2nd Street, 15th Avenue, and 17th Avenue time. On the Eastbound 17th Avenue, 15th Avenue, 2nd Avenue and 9th Street. This table shows,—a record is made of these stations by the conductors, the time in passing, the number of passengers on the car at each of the stations. I have tabulated——

Q. Are those copies of the originals in your office?

A. These are the originals themselves turned in by the conductors and dated.

Q. I think you had better show as you go along how many passengers to the car and the capacity of the cars.

A. My idea is first to submit this to the Commission, but on account of the work of hunting through this, I have had one month tabulated.

Q. I see.

A. And this month is the month of May beginning on May 2nd and running through to May 31st.

Chairman GEARY: This year?

A. Yes, sir, and if I recall right,—I believe that takes in part of the Legislature term. Mr. Attorney General when did the Legislature adjourn?

86 Mr. BULLARD: I don't recall.

A. I would like to read this.

Mr. BULLARD: Have you it summarized?

A. Yes sir. I will read this. (Witness reads that portion of summary covering May 2nd, 1913, shown in Exhibit A.) The total is 664.

Chairman GEARY: For what day?

A. 2nd day of May, 1913. I regret that I did not call for a statement of the passengers on that car, but if you gentlemen will take the total, it will indicate the number of passengers that get off the car between 15th and 17th Avenue, that is the number of passengers who presumably left the car between 15th Avenue and the Capital Entrance. If you take 664 as the total that day, it shows 275 that were on the cars at 17th Avenue.

Q. That 275 on that day went west of 17th Avenue?

A. Yes sir. In round numbers. If it was 274, there was 400 got off at the Capital in the eighteen hours of travel. Now I will read the east bound, if you desire or take any day that any member of the Commission desires.

Q. I think Mr. Mitchell, we had better get this thing in shape for the record. What is this paper I am handing you?

A. It is a condensed statement showing the number of passengers on our cars at 15th Avenue and 17th Avenue, and Adams on the eastbound and westbound trips.

Q. What days?

A. Sheet of May 2nd to May 31st inclusive, showing the number of the car, showing the time the car passed 15th Avenue and showing the time the car passed 17th Avenue and Adams; the number of passengers on at each point, both on eastbound and westbound travel; also showing total number of trips made passing those points for thirty days.

Mr. CHALMERS: I offer this in evidence as Defendant's Exhibit A.

Chairman GEARY: Very well; it is introduced and so marked.

Mr. CHALMERS: This testimony you have given refers to this Exhibit A just introduced in evidence?

87 A. Yes sir, and if I may I would like to introduce something else in connection with that. I stated this shows the car number,——

Q. Exhibit A?

A. Exhibit A and I would also like to furnish a statement showing the seating capacity of the different cars.

Chairman GEARY: The car numbers are shown on there?

A. Yes, sir.

Mr. CHALMERS: Give the seating capacity of the cars.

A. Car No. 10, fifty, Car No. 11 fifty, Car No. 14 fifty, Car No. 1 thirty-two, Car No. 21 forty-nine, Car No. 8 Twenty-eight, Car No. 9 twenty-eight.

Q. Give the car numbers again?

A. Cars No. 10, 11, 14, 1, 21, 8 and 9.

Q. You ran nine cars on Wast Washington?

A. No sir, those were the cars that were in service at different times during the month.

Q. Do you want these back (Conductor's slips)?

A. Yes, sir, I would like to have them back.

Mr. CHALMERS: What is your ruling on that gentlemen? Can we withdraw them?

Mr. COLE: You can introduce them and then withdraw them.

Chairman GEARY: We will have no use for them, you may take them with you; is this summary correct?

A. To the best of my knowledge and belief they are copied correctly.

Q. What is this list of papers?

A. It is a record made by each conductor showing the number of passengers on the car as the car passes certain stations, designating the stations, for instance 9th street, every street wherein eastbound passengers would alight from the car and for the west bound passengers, for instance 15th Avenue and 17th Avenue.

Q. Exhibit A is made up and compiled from these conductor's reports?

A. Yes sir.

Chairman GEARY: I don't think it will be necessary to leave those.

88 Mr. CHALMERS: We stand ready at any time to furnish these lists for you if you desire them for checking purposes or any other purposes.

A. As I glanced over this record I do not think I found where there was one car or one trip where the car was overcrowded, or where there was not seating capacity left on the car.

Mr. CHALMERS: In this connection we will say this is all we have had time to compile since we were notified of the time of the hearing, but we will make any compilation for any month or for the year or any number of months that the Commission desires, but we introduce this as an average month.

A. It is really more than an average month because it contains much of the Legislative travel.

Mr. COLE: During that time you had a seven minute schedule?

A. I had an extra car running from the center of the City to the Capital Building to accom-odate the extra Capital patronage.

Q. Does that report show the time you pass certain points?
A. Yes, sir.
Q. How has your service been in regard to promptness?
A. It has been excellent. E-cellent bar-ing the occasional interruptions that will be found in any street car system. I will explain that: interruptions are bound to come where work is going on. For instance, I had to have an extra car on the west end when the track was being renewed, and it was necessary to transfer passengers from one car to another but my track from one end to the other is now in good shape.
Q. What has been the situation during the last month regarding repairs and things causing interruptions?
A. There has been considerable interruption on account of the west end track from the Capital being repaired and also the east end where the track was renewed, the East Lake park Track having been rebuilt and just completed.
Q. Do you now figure you can give more prompt and efficient service?
A. I do.
Q. Any other statement you desire to make?
89 A. Only that one property holder on West Washington Street spoke to me a few days ago and he said he had no delays whatever at the switch. I should have had him here, but he preferred not to appear.
Q. You should have told me about it and I would have had him subpœnaed. I am handing you a paper, will you tell the Commission what it is?
A. This paper is an e-act copy of a circular under the head of "Protest" now being presented to property holders on West Washington Street.
Q. Did you have anything to do with the circulation of it?
A. Absolutely not. I state positively I knew nothing about it until about Wednesday of last week when it had reached,—the last signature on it at that time was Louis Killeen. I then as agent for the Sherman Investment Company signed it for that Company.
Q. You know that is an exact copy of it?
A. It is an exact copy.

Mr. CHALMERS: I wish to introduce this as Defendant's Exhibit B.

A. I am told it is to be presented to the Common Council.
Q. I will read it into the record. (Reads Protest Marked Exhibit B.)

Cross-examination:

Mr. BULLARD: How many times during the month of May have you been off the schedule time?
A. I could not answer that.
Q. You didn't tabulate that?
A. The time of the cars passing the stations is tabulated.
Q. I asked you if this was summarized and you said it was?
A. I beg pardon?
Q. I asked you if this was summarized and you said it was?

A. It is to the time of passing these stations. I can't say as to leaving the terminals; that is not summarized. I would have to check it up to answer that. I presume they were off a minute or two, perhaps three minutes.

Q. As long as fifteen minutes?

A. No sir, to the best of my knowledge and belief no, except in cases like this morning when the power was off at the P. G. & E. I don't know how many minutes it was off then. When I came up here the cars were stopped.

90 Q. Is it possible from these lists to summarize how many times you were late?

A. It would be better to take it off another sheet I have.

Q. Hav-n't you got the time on the sheet you introduced?

A. Yes, passing the different stations.

Q. They would show if you were late on the schedule?

A. I can make up a statement of that kind if you so desire, showing the time, if any, we were delayed in leaving the east end or west end.

Q. Starting in with to-day can you at the end of the week, each week file a summarized statement for the next month showing how often your cars are off schedule time on Washington Street?

A. Yes sir, absolutely, and would be glad to do so, if you wish it.

Q. Will you furnish it?

A. Yes sir.

Mr. COLE: Can you take a month back and do so?

A. I would prefer beginning to-day for the reason my track is now in good shape.

Q. I presume you have it for the month back?

A. Yes.

Q. The statistics show it for the month of May?

A. Not this statement; I would have to take it from my other records.

Q. Will you prepare a schedule showing how many times you were late in May?

A. Yes, sir.

Chairman GEARY: Your conductor does not file a statement with you showing the cause of the delay?

A. If he was late any length of time, we would know about it, say ten or fifteen minutes.

Q. Over five minutes?

A. Ten minutes; it is something unusual to be delayed that length of time on the side track, very unusual.

Q. What is your objection to double tracking, it has to be done some time?

A. Well, our objection at the present time is that we do
91 not feel the travel warrants it, and secondly we haven't the money for it, and thirdly because we feel we are being forced into it unjustly, not by this Commission, understand.

Q. How many of your cars have airbrakes on them now?

A. Five.

Q. All cars on the Washington line have air brakes?

A. No sir.

Q. How many cars on Washington Street have air brakes?

A. None.

Q. How many cars have you that hav-n't got air brakes on?

A. I didn't catch that question.

Q. How many double truck cars have you in the service that hav-n't air brakes?

A. Three double truck cars not equipped with air brakes.

Q. Don't you remember you were to have them on all double truck cars in a certain length of time?

A. I believe the order excepted those three which we hope to put out of service when the new cars come in.

Q. My recollection is that all double truck cars shall have air brakes?

Mr. CHALMERS: You mean the modified order?

Q. Yes sir.

A. I understand it referred to the d-uble truck cars that would be continued in service regularly and I believe I explained to the Commission that air brakes, according to the expert of the Westinghouse Air Brake Traction Company, that air brakes could not be placed on those double truck cars that are not now equipped; they are too old style and we hope to get rid of them.

Q. You knew what the alternative was when the order was made, if you could not put air brakes on them you should get cars that can be equipped with them?

A. I think the order reads that all cars to be hereafter received shall be equipped with air brakes.

Chairman GEARY: Take the Washington line so far as traffic is concerned, how does it compare with other lines?

A. Just this division?

Q. Yes? Is it not heavier, is there not a greater volume on this end?

92 A. Than on a particular division of some other branch?

Q. Yes?

A. Well, perhaps I can answer that more intelligently by taking it as a division of the Washington Street Line.

Q. Take Washington Street?

A. Well, it is about one-third.

Q. Larger?

A. No sir, it is about one-third of the Washington Street line.

Mr. COLE: I don't understand?

A. For instance, if the total receipts on Washington Street was $90.00, the West Washington division would show $30.00.

Chairman GEARY: At the time the sale was contemplated you had data prepared, was it not, showing the receipts and volume of traffic upon the individual lines making up the system?

A. No, sir, I think not, if any sale was contemplated or worked up it was done through the Los Angeles office.

Q. How does this Washington line compare with the Indian School line?

A. Washington Street daily receipts are in the neighborhood of $100.00 and Indian School line about $75.00.

Q. And yet you are double tracking the Indian School line?

A. Yes, but we are running the Glendale cars over that too.

Mr. BULLARD: Have you started double tracking yet?

A. No sir.

Q. When will you begin?

A. I am waiting for rails, if I had the rails I could start at any time.

Q. Your time is up?

A. I am sorry but I could not get my material in and it is also due to the delay of General Shreman in the east.

Mr. CHALMERS: Getting back to the concrete matter before us, I wish to say gentlemen, I don't think there has been such a showing made here as would warrant you in ordering any double tracking. The showing on the part of the Commission without taking into consideration any showing on the part of Mr. Mitchell, might warrant you in looking into the question of the time table of this road and seeing that proper and adequate service is fur-
93 nished along this line. I think a showing was made by Mr. Mitchell that even that situation has been met, at least before you do anything on that, it would be well to look into this tabulation. But if there is anything wrong with conditions it is something that can be met more expeditiously and much cheaper for the railroad company than by ordering it arbitrarily to put in double tracks along certain distances; there is no showing of congestion of traffic or anything of that kind and it is plainly evident if you were to assume that conditions were such as to make this company spend a good many thousand dollars double tracking, it would be taking this Company's money without due process of law and in that connection I would like to read you a few exce-pts. from the opinion of Chief Justice Lamar.

Mr. BULLARD: Why not submit a brief.

Mr. CHALMERS: I want these gentlemen to note this, they are busy.

Chairman GEARY: What is the page and volume?

Mr. CHALMERS: W. O. & N. Company vs. Fairchild, 32 Sup. Ct. Rep. 538.

Chairman GEARY: Opinion of the Supreme Court of the United States?

Mr. CHALMERS: Yes sir. (Reads from opinion.) Now in regard to this brief, I have a citation of authorities that I would like to submit to you. This is my only copy; I didn't bring it here with the idea of filing it as a brief, but I will tell you what I will do. I will take it back and have copies made of it and serve a copy on the Attorney General and send you a copy,

Chairman GEARY: Very well.

Mr. BULLARD: Mr. Mitchell, these feeder wires, have they ever been installed?

A. They have not.

Q. Your application in March says they will be here in two or three weeks?

A. I expected them but we haven't been able to get the order completed at Roebling's New Jersey plant. We have wired for them and look for the shipment every day, and as I explained to the Chairman this morning I was in hopes of having iron poles
94 to set up through the center of town to replace the wooden poles.

Q. On March 13th you say, the wires are expected to be here in the next two or three weeks?

A. I presume I made that statement.

Q. And you asked for an extension of sixty days?

A. Yes sir.

Q. Which you received and ninety days have gone by?

Mr. CHALMERS: What are the facts about that?

A. That is the fact, I expected them in here.

Mr. BULLARD: How about the storm curtains?

A. They have not been placed upon the open cars. I have asked the Commission to send down a man so as to show how difficult it is to put them on the small cars.

Q. Have they been put on any?

A. Yes sir, they have been put on one.

Q. That order hasn't been complied with?

Mr. CHALMERS: Yes sir, but if you find you have to tear a car to pieces to put on storm curtains, why we had better throw the car out.

Mr. BULLARD: This new track from Washington Street to Indian School, has it been put in?

A. No sir.

Q. The ninety days have expired on that?

A. I expect they have, or nearly so.

Q. Your trolley from Pierce Street to Indian School?

A. No sir.

Q. "Material for this has been ordered and is being accumulated from time to time. The Company has not yet had sufficient force of men and material to get at this work. An Extension of 90 days' time is requested to complete this." That hasn't been done?

A. That copper wire for overhead is on the same order with the feed wire and is being made by Roebling.

Q. That has not been done?

A. No sir.

95 Mr. CHALMERS: When do you expect the copper wire in?

A. Within the next thirty days.

Mr. BULLARD: The original order was made nine months ago and you haven't had time to get any of this done?

A. Yes sir, we have done a lot of work.

Q. Have the carbon headlights been placed on the cars?

A. Yes sir.

Q. Half mile of new trolley with new poles from Roosevelt Street to the end of Brill line?

A. That hasn't been done, but difficulties in the matter of right

of way on that line have delayed us and we hope to have them fixed up this or next week, deeding to the City part of the right of way.

Q. Has work commenced on that?

A. I am ready to commence at a moment's notice.

Q. That was to be completed in 90 days?

A. Yes sir, and the poles for that line came in Saturday.

Q. As a matter of fact Mr. Mitchell on every single matter that you have requested an extension on the 17th of March, 1913, and obtained an extension on, you haven't even commenced work?

A. On those items, no. I have finished up to where we had trouble with the right of way on Pierce Street and stopped: that is all finished and I am almost finished on East Lake Park line; there is a piece there I cannot finish for two or three months, all of three months.

Q. You asked for 60 days' time on that and it is now 90?

A. I have finished switching from the side of the street to the center of the street, about 200 feet of tract and,——

Q. From Washington to Indian School you hav-n't commenced work?

A. No sir.

Q. And you were to finish it in 90 days?

A. We haven't commenced it.

Q. And the trolley from Pierce Street to the Indian School, you hav-n't commenced work on?

A. No sir.

Mr. CHALMERS: Tell the reasons.

96 A. The reason for not beginning work on the Indian School line is on account of General Shreman being delayed in the east five or six weeks. Before he went away he had an arrangement made for rails; previous to that we had rails purchased, but on account of the order of the Commission we had to change from that rail to a heavier rail and the General had an order in for sufficient rails and I was sent to inspect them and I found they were not the rail he had purchased and I rejected them and went east as far as Albuquerque with him on that trip. I had to notify him in the east that the rail was not what he expected and consequently I turned them down. He expected to be back a month ago, so he told me, and he would rearrange for the rails and since then he has been detained.

Mr. BULLARD: Page seven of the modified order read- as follows: "All cars hereinafter installed and all double truck cars now in service and operated by the defendant shall have, in addition to wheel hand brakes, suitable and efficient air brakes, and such style of equipment shall be a standard Westinghouse type." That is the order and now you state that three of the double truck cars haven't been equiped with air brakes?

A. We have three double truck cars without air brakes. Three Glendale cars and two Indian School cars are equipped with air brakes. The three cars not equipped are placed in service only when we have to do so, and it is our intention to set them aside as soon as the new double truck cars are received. I believe that is

the understanding the Commission had with regard to those cars, more particularly after I told them the expert of the Westinghouse people stated that no air brakes could be placed on them with any satisfaction.

Q. To be frank, I cannot find where you have complied with a single thing you asked an extension on. I am going away next week to be gone two months and if everything that you requested time on is not complied with when I return I am going to find out if we cannot enforce the order. I am not going to wait for contempt proceedings, but I am going to proceed in the Superior Court. The Statutes give me authority to do so without
97 action of the Commission.

I, J. M. Phillipowski, Official Reporter of the Arizona Corporation Commission, do hereby certify that the above and foregoing is a true and correct transcript of my shorthand notes taken of the evidence in the above entitled cause.

J. M. PHILLIPOWSKI,
Official Reporter,
Arizona Corporation Commission.

Endorsement: E-11. Affidavit S. H. Mitchell and Exhibit. Filed Nov. 6, 1913. George W. Lewis, Clerk. By Frank E. McCrary, Deputy.

98 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

S. H. Mitchell being first duly sworn, deposes and says:

Supplementing my former affidavit on file herein and replying to that part of the affidavit of Mr. W. Paul Geary on file herein concerning the noncompliance by the complainant with previous orders of the Arizona Corporation Commission. Although these statements may not be considered entirely pertinent to this inquiry I desire to state that to the best of its ability the complainant has complied with these orders.

With the exception of the work on the Indian School line delayed because of inability to secure rails and with the exception of the installation of new cars delayed by the builders, and of a small stretch of feed wire, every order has been accomplished. The work on the Indian School line is now going on and will soon be com-

pleted. The new cars have been shipped and will be in operation within a few days. The other requirements have all been met.

Former affidavits submitted by the complainant on file herein show that for the years preceeding July 1, 1913, no return was made on the value of the company's property. I find that from July 1, 1913 to the present time the company has not been able to meet its expenses and the revenues are considerably less than the operating expenses. A fair and reasonable rate of return on the company's property would be from 8 to 10% and a rate of 10% would be necessary to interest capital in a public utility enterprise of the nature of that of the complainant in Arizona.

S. H. MITCHELL.

Subscribed and sworn to before me this 11 day of November 1913.

AGNES M. LERG,
[SEAL.] *Notary Public.*

My commission expires Oct. 21, 1917.

99 Endorsement: In Equity No. E-11. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., Defendants. S. H. Mitchell Affidavit for Complainant. Filed Nov. 11, 1913. George W. Lewis, Clerk. By Frank E. McCrary, Deputy.

100 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit of Charles Woolstenhulme.

STATE OF ARIZONA,
County of Maricopa, ss:

Charles Woolstenhulme, being first duly sworn, deposes and says: I am assistant bookkeeper for the Phœnix Railway Company of Arizona, complainant in the above entitled cause. During the period from August 23, 1913 up to and including October 15, 1913, I have kept from daily reports made by employees in the course of their employment on the Washington Street line of the complainant company a record of the time at which the cars running on the Washington Street line of the complainant passed 7th, 15th and 17th Avenue respectively, together with a record of the number of passengers upon said cars at the time at which said cars passed the above mentioned points.

I have thus ascertained that during the said period as aforesaid the average number of passengers riding on said cars at the time the

cars passed 7th avenue going west was approximately five; the average number of passengers riding on said cars at the time of passing 15th Avenue going west was less than four, the average number of passengers riding on said cars at the time of passing 17th Avenue going west was less than three; the average number of passengers riding on said cars at the time of passing 17th Avenue going east was less than two; the average number of passengers riding on said cars at the time of passing 15th Avenue going east was approximately three and the average number of passengers riding on said cars at the time of passing 7th Avenue going east was approximately four.

It was further found that during said period aforesaid, with the exception of delays due to the fact that the power was shut off,
101 not more than ten times was there a greater variation than two minutes from a 15-minute interval between cars at the above points respectively.

During the period from September 1st to September 30th, inclusive, I have also kept in the manner aforesaid a report of the time at which the Washington Street cars of the complainant company left the east and west terminals respectively of said Washington street line. I have found that during said period aforesaid, with the exception of September 15th, upon which day because of the fact that the power was off during a large part of the day, there was unavoidable delays, and with the exception of other delays due to the power being off, only 57 times were the cars of the complainant company off schedule more than two minutes in leaving said terminals; only five times during said period was there a greater delay than 5 minutes from the scheduled time of leaving said terminals. During this period, the cars of the complainant company left said terminals more than 3,700 times, so that approximately 99% of the cars left said terminals within two minutes of the scheduled time.

I further found that more than 98% of the cars left said terminals at the precise scheduled time.

CHARLES WOOLSTENHULME.

Subscribed and sworn to before me this 5th day of November, 1913.

AGNES M. LERG,
[SEAL.] *Notary Public.*

My commission expires Oct. 21, 1917.

Endorsement: E-11. Affidavit Chas. Woolstenhulme. Filed Nov. 6, 1913. George W. Lewis, Clerk. By Frank E. McCrary, Deputy.

102 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA
vs.
W. PAUL GEARY et al.

I hereby certify that at the same time that I served the writ of subpœna in the above entitled cause on the persons named in the Return of said writ, namely, W. Paul Geary, F. A. Jones, Clyde M. Gandy, Assistant County Attorney for Maricopa County, L. C. Hardy, Assistant Attorney General for Arizona, George W. P. Hunt and Amos W. Cole, I served upon the said persons the bill of complaint, a certified copy of an order of Honorable William H. Sawtelle, District Judge of the United States in and for the District of Arizona, dated August 28, 1913, together with a notice of complainants' Solicitors dated August 29th, 1913, and three affidavits of C. E. Newcomer, sworn to August 28, 1913; two affidavits of G. P. Gould, sworn to August 28, 1913, and the affidavit of S. H. Mitchell sworn to August 27th, 1913.

Such service was made by leaving a copy of said documents with the above named persons, in the city of Phœnix.

Dated at Phœnix, Arizona, this 6th day of September, 1913.

C. A. OVERLOCK,
United States Marshal,
By F. G. HUDSON,
Deputy.

103 Endorsement: E-11. United States District Court, District of Arizona. Ph'x Ry. Co. vs. W. P. Geary, et al. Supplemental Return of Marshal. Filed Sept. 6, 1913. Allan B. Jaynes, Clerk, by Frank E. McCrary, Deputy.

104 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Bond.

Know all men by these presents, That Whereas, the above named complainant has been granted a temporary restraining order against

the above named defendants in the above entitled cause, enjoining and restraining said defendants from enforcing or attempting to enforce the provisions of a certain order of the Corporation Commission of the State of Arizona, as in the complaint filed in the said action and in said restraining order entered therein is more particularly set forth and described.

Now, therefore, we the Phœnix Railway Company of Arizona, as principal, and Maryland Casualty Company, as surety, in consideration of the premises and of the granting of said restraining order, do jointly and severally undertake and agree in the sum of $2000 to bear all costs and damages not exceeding the said sum of $2000 that may accrue to the defendants, or either of them, by reason of the granting of said temporary restraining order should the Court finally decide that the complainant was not entitled thereto.

Witness our hands hereto this 29th day of August, 1913.

[SEAL.] PHŒNIX RAILWAY COMPANY OF ARIZONA, *Complainant*,
By S. H. MITCHELL, *M'g'r.*
MARYLAND CASUALTY COMPANY,
By A. J. BENT, *Attorney.*

Countersigned:
By O. E. SCHUPP, *Attorney.*

105 Endorsement: E-11. Phœnix St. Ry. Co. vs. W. P. Geary et al. Bond. Filed Aug. 29, 1913. Allan B. Jaynes, Clerk. By Frank E. McCrary, Deputy.

106 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, a Corporation, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit of C. R. Price.

STATE OF ARIZONA,
County of Maricopa, ss:

C. R. Price, being first duly sworn, upon his oath deposes and says that he is over the age of twenty-one years, and is competent to make the following affidavit.

That he has read the affidavit of J. P. Gould filed in the above entitled cause and is familiar with the contents thereof and that, at the instigation of the Arizona Corporation Commission and the Attorney General of Arizona, he, between the 18th and 23rd days of September, 1913, took a census of the same district described in the said affidavit of J. P. Gould and has caused to be prepared a map showing the number of residents of said district, which map

CHARTS

TOO
LARGE
FOR
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is attached to this affidavit and especially, by reference, made a part thereof.

Your affiant further states that the census which he caused prepared of said district described in the affidavit of the said J. P. Gould reveals, as appears from the map hereto attached and made a part of this affidavit, that there were residing in said district in proximity and contributory to the West Washington Street line of the complainant company a total of 1,436 people, above the age of six years, and 146 children under the age of six years, and 78 automobiles.

Your affiant further states that he found in said district 53 vacant houses and, allowing three persons to each house, the total population of said district described in the affidavit of the said J. P. Gould would total the amount of 1,595 persons over the age of six years.

C. R. PRICE.

Subscribed and sworn to before me this 29th day of September, 1913.

[SEAL.] WILLIE LOVETT,
Notary Public.

My Commission expires June 18, 1917.

107 Endorsements: In Equity. No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary et al., Defendants. Affidavit of C. R. Price.

(Here follows diagram marked page 107½.)

108 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Counter Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

Elmer Warren, being first duly sworn, upon his oath, deposes and says that he is a resident of the City of Phœnix, and as a resident thereof has frequent occasions to ride upon the cars of the complainant railway company which are operated upon that line of its railway which is commonly designated and known as the West Washington Street line.

Affiant further says that he is a member of the City Council of the City of Phœnix and, therefore, competent to make affidavit in this proceeding; that he knows considerable about the traffic on the west end of the Washington Street line on that portion of said line which is single tracked; that the service rendered by the complainant company upon the said West Washington Street line is, in his opinion, very poor; that if you want to go down town
109 and if you happen to miss a car you have to walk for a mile before you catch another; the reason for said wait being the cars are lying in the switch and as a general rule you can walk down to the switch overtake a car and beat it into town; that this is pretty nearly a usual occurrence. That, in affiant's opinion, the delay in the traffic on West Washington Street is caused because of the reason that complainants have not a double track upon said West Washington Street line from 7th Avenue west and that one car has to wait until another car comes along; that, in the opinion of affiant, up to the time of the strike on the street railway some three or four months ago that the traffic on the West Washington Street line was very good, that ordinarily the cars were very well filled all the time; that at noon and in the evenings the cars on West Washington Street were very well filled and at times were crowded.

Affiant further says that under the present condition of affairs with the delays incident to the single track, that it is possible coming east to start from 7th Avenue while the car is in the switch and walk to 4th Street, a distance of eleven blocks and beat the car to said 4th Street.

Affiant further says that in the three months preceding June 16, 1913, that he had to wait at the switch for a car more times that

he has caught a car; affiant further believes that if West Washington Street was double tracked from 7th Avenue west that these delays would be obviated and that the traffic would be largely increased by the increased efficiency of service.

Affiant further states that on said West Washington Street
110 line, where the same is single tracked, he has seen a car coming from the east and a car coming from the west and the crew would consult whether they could pass at the switch at 7th Avenue, and generally they would conclude that they could not do so, and would hold the carload of people on that switch until a car came from 4th Avenue to 13th Avenue; that this is a regular occurrence. That affiant believes that the complainant needs a double track on West Washington Street in order to afford adequate service to the public.

Affiant further states that, up to three or four months ago, the traffic on said West Washington Street was very good; that it would have been a great deal better if the cars of the complainant company were not old, antiquated and painful and difficult to ride in, and that the lessening of the traffic in the past four months has been caused, partially by a strike of the employees on its line, and partially because of the rapidly growing disgust on the part of the traveling public of the City of Phœnix toward the complainant company, and because of the grossly inadequate service rendered by said company to the traveling public in the City of Phœnix.

Further affiaint saith not.

ELMER WARREN.

Subscribed and sworn to before me, this — day of September, 1913.

[SEAL.] LUCRETIA ELLIOTT,
Notary Public.

My commission expires February 16th, 1916.

111 Endorsement: In Equity. No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. P. Geary et al., Defendants. Affidavit.

112 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Counter Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

George P. Bullard, being first duly sworn, deposes and says:

That he is the Attorney General of the State of Arizona, and has been a resident of the City of Phœnix for sixteen years last past;

That he is acquainted with the street railway lines of the Complainant in the city of Phœnix, and especially with that portion of the lines running on Washington Street in the City of Phœnix; that said Washington Street is the main thoroughfare in the said City and the principal business street in the same; that the line of complainant's railway runs thereon east and west from the east boundary of the city limits of the City of Phœnix to the western boundary thereof; that from Seventh Street east on said Washington Street to Seventh Avenue west the line of complainant's street railway on said Washington Street is double tracked, and from Seventh Avenue west the complainant maintains on said West Washington Street a single track for a distance of over ten blocks;

That the only manner in which cars going in different directions east and west when they pass one another west of said Seventh Avenue on Washington Street is by means of a switch at Eleventh Avenue on said Washington Street; that consequently if one or either of the two cars that are scheduled to meet at said switch is delayed or late, or has met with an accident, then both cars and the passengers thereon are delayed, whereas if there was a double track on said West Washington Street from Seventh Avenue west, and one car should be delayed, it would result merely in the delay of the one car and its passengers, and not of the car and its

113 passengers coming from the opposite direction.

That the line of complainant's railway on said Washington Street is the only line of street railway running east and west in said City of Phœnix, and said Washington Street is the only street in said City of Phœnix upon which any line of street railway runs east and west; that the City of Phœnix has a population, transient and permanent, of about 25,000 people; that at Washington Street and Seventeenth Avenue is located the State Capitol, and that in said State Capitol are located the offices of the following

State officials, together with their subordinates and employes, to wit: Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Instruction, Supreme Court of the State, Corporation Commission of the State, Tax Commission of the State and the Land Commission of the State, the Superintendent of Roads, the Superintendent of Weights and Measures, the Superintendent of Mines, the Board of Control and the Adjutant General;

That the only means of transportation to the said State Capitol is over the said single track line of railway of complainant, and all of said State officials and their employes and all persons transacting business with said State officials or Departments of State must rely upon said single track line of railway of complainant on said West Washington Street for transportation, whether or not they live in the district traversed by said single track line; that all of said State officials and their employes have to make on an average of four trips daily over said line of railway and that time is a matter of importance with them; that the Supreme Court of the State, the Corporation Commission, the Tax Commission and the Land Commission hold frequent hearings and trials at said State Capitol, and that time is important to all who are obliged or desire to attend before said Supreme Court, Corporation Commission, Tax Commission, and Land Commission, for the reason that said hearings are held before said tribunals at fixed times;

That your affiant has been the recipient of many complaints from diverse persons for the reason that said persons complaining could never be sure that they would arrive at the hearings before said tribunals on time, because of the delays caused by cars being delayed at the switch on the single track of complainant's line on
114 West Washington Street and other inadequacy of the service.

Your affiant further states that there is situated on West Washington Street, between Tenth and Twelfth Avenues, where complainant's single track runs, the City Library, the same being the only free public library in the City of Phœnix; that said library is patronized by a large portion of the residents of Phœnix from all parts of the City, and largely from districts outside of the one traversed by complainant's single line of track on said West Washington Street; that the only way to be transported to said Public Library from any part of the City is over complainant's single track of railway on West Washington Street, and that the delays in the transportation of the public upon complainant's single track line of railway on said West Washington Street necessarily and consequently results in delay and annoyance to all the patrons of said Public Library who may be going to or from said Library at the time of any delay to the cars of complainant on said single track through failure to make connection at the switch, or because of confusion and accident when the cars of complainant pass one another at the switch upon said single track.

Affiant further says that he has read the affidavit of J. P. Gould, which the complainant has caused to be filed as a part of its above entitled cause of action, and in reply to that part of the affidavit of said J. P. Gould which refers to the cost of constructing the

double track required by the order of the Corporation Commission of June 23rd, 1913, together with the cost of additional paving which would be required to be done by the complainant company, because of the construction of said double track as required by said order of the Corporation Commission of Arizona, your affiant states that the terms and conditions of the franchise under which the complainant company is now operated within the city of Phœnix and which was granted to its assignor, J. O. Dunbar by the Common Council of the City of Phœnix on the 28th day of July 1892, provides in Sec. 7 thereof as follows:

"In case the common council of Phœnix shall establish other grades or pave any of the streets of said City of Phœnix, the said J. O. Dunbar, his successor or assigns agree that they will conform said railroad to said grade, and, will, without cost to the said City, grade and pave the space between the rails of said road for a distance of two feet on both outer sides of rails, with the same material used by the City in paving said street, and under the supervision of the City Engineer."

115 Your affiant, therefore, states that it is a condition precedent, imposed by the terms of the franchise under which the complainant company is operating, and which was granted to it as the assignee by the common council of the City of Phœnix, that it pave, whenever required so to do by the City of Phœnix, the space between the rails of its road for a distance of two feet on both outer sides of rails, with the same material used by the City in paving said street, and that, therefore, the affiant, J. H. Gould, should not now be heard to complain of the cost which complainant railway company would incur in paving the additional track upon West Washington Street, as required by the order of the Corporation Commission complained of.

Affiant further states that as Attorney General of the State of Arizona, that he is familiar with the laws of said State of Arizona, and that the said Corporation Commission of the State of Arizona had full power and authority of law under and by virtue of the State Constitution of the State of Arizona and the laws of the State of Arizona to promulgate, make and pass the order made and entered by them, which said order is the basis of complainant's complaint herein, and that in particular, the said Corporation Commission had the power, right, and authority to promulgate, make, and pass said order under and by virtue of the following clause in the State Constitution, to-wit:

"The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used, and just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and

safety, and the preservation of the health of the employees and patrons of such corporations;"

the same being a portion of Sec. 3 of Article XV of said State Constitution; and also because of the following State Statute, to-wit: Sections 35 and 36 of Chapter 90 of the Laws of the First Session of the First State Legislature of the State of Arizona, which reads as follows, to-wit:

116 "SEC. 35. Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rules, regulations, practices, equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the Commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed and shall fix the same by its order, rule or regulation. The Commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public service corporation, and upon proper demand and tender of rates, such public service corporation shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.

"SEC. 36. Whenever the Commission, after a hearing had upon its own motion or complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public service corporation or of any two or more public service corporations ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or conveniences of its employees or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order."

Further affiant saith not.

G. P. BULLARD.

Sworn and subscribed to before me this 16th day of October, 1913.

[SEAL.] WILLIE LOVETT,
Notary Public.

My Commission expires, June 18, 1917.

Endorsements: In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary et al., Defendants. In Equity. No. E-11. Counter Affidavit.

117 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, AND AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

W. Paul Geary, being first duly sworn, deposes and says:

That he is the Chairman of the Corporation Commission of the State of Arizona; that the complainant Company in the above entitled matter has on several occasions been before the Corporation Commission of the State of Arizona and been investigated by the Corporation Commission of the State of Arizona in the proceeding referred to in complainant's bill in equity and on prior complaints made before the Corporation Commission by citizens of the City of Phœnix; and through said investigations and the testimony had before the Corporation Commission on said several hearings and from personal investigation, that your affiant is reasonably well acquainted with the condition of the railway line owned by the Complainant Company in the City of Phœnix on West Washington Street, and especially that portion of it west of Seventh Avenue on said Washington Street, and is reasonably well acquainted with the conditions of traffic on such portion of complainant's line;

That as affiant is informed from testimony laid before him in various investigations of said complainant Company and from his personal observation of said portion of said railway line of said complainant Company, and therefore verily believes that the traffic on complainant's line on West Washington Street and in other portions of the City of Phœnix would be largely increased, were it not for the fact that the complainant's line of street railway in the City
118 of Phœnix is absolete, antiquated, and in many places in an unsafe condition; that the cars run by the complainant Company over said West Washington Street are of an old, obsolete and antiquated pattern, in some instances the cars being over twenty-five years of age, and as testimony produced before the Commission shows, having been run twenty-five years ago on Market Street of the City of San Francisco; that the cars of the complainant Company are so uncomfortable to ride in, that no person rides upon the same unless absolutely obliged to do so, and that said condition of roadway trolley line and cars of the complainant Company on their line on West Washington Street and in other

places in the City of Phœnix has a tendency to decrease the traffic upon said cars and upon the line of the said complainant Company, and that if the complainant Company would install comfortable and safe cars upon its line on West Washington Street and would double track said Washington Street that in the opinion of affiant the traffic upon said line would be doubled and probably quadrupled;

That under a former order of this Commission the complainant Company are required to place three new up-to-date cars upon their said line on West Washington Street, equipped with air brakes, and while it is true that for a long period of time the complainant Company has disregarded and disobeyed the order of the Commission to place said cars upon their said line on West Washington Street, still they have promised and agreed to do so; and affiant believes from information an knowledge in his possession, that if the complainant Company at some time find it convenient and agreeable to keep said agreement and to obey the order of the Corporation Commission and place said new cars upon said West Washington Street, that the traffic of the complainant Company on the said West Washington Street will be doubled and probably quadrupled;

That from the information heretofore laid before the Corporation Commission and testimony had before it in various hearings and investigations of the complainant Company and from affiant's own knowledge and personal observation, one of the reasons that the traffic is not greater upon the complainant's lines on West Washington Street from Seventh Avenue West, is the long delay in the transportation of passengers, for the reason that at
119 the points where the cars of the complainant Company pass one another upon said single track aforesaid, one of the two cars which are to meet are often late, and it is often more convenient and the time of the passenger is better expedited by getting off of the car and walking to the end of the line than attempting to continue his ride thereon, and that for the aforesaid reason, because of the delay in the transportation of passengers upon the line of the complainant Company on West Washington Street, West of Seventh Avenue, because of the maintenance by the complainant Company of a single instead of a double track thereon, the traffic upon said line is discouraged and the people will not travel upon the same unless they are absolutely compelled to do so;

That it is the experience of your affiant, both personally and officially, that the complainant Company do not maintain upon their said line on said West Washington Street promptly the schedule as laid down by this Commission for them to observe.

Affiant further says that while the traffic on the lines of the complainant Company on said West Washington Street and on other portions of their lines in the City of Phœnix for the past five or six months has been extremely light, that another principal reason therefore is that the complainant Company has had a strike upon its lines and has had difficulty with its employes and has refused to arbitrate with said employes, and that for said reason the sympathy of the traveling public in the said City of Phœnix, being

entirely with the striking employes, and the traveling public in the City of Phœnix being so disgusted with the course proceeded by the complainant Company in the management of its lines and in its failure to give the people of the City of Phœnix adequate service, have, except when absolutely compelled to do so, refused to ride upon the lines of the complainant Company when they can find any other means of transportation; but that affiant believes and is informed and therefore makes affidavit on information and belief, that if the complainant Company will make even a half-way attempt to give the people of Phœnix an adequate service on its said lines in the City of Phœnix, and will even endeavor to partially
120 obey the orders of this Commission, heretofore entered by this Commission, that the traveling public in the City of Phœnix will again patronize the said complainant Company's lines in the City of Phœnix to an extent that will probably quadruple the receipts of the Company;

That while it is true that prior to the order complained of in complainant's bill of complaint, that this Commission over a year ago entered an order compelling the complainant Company for the safety of the public and its employees to make certain improvements upon its said lines to the extent of some thousand dollars, despite the fact that the complainant Company agreed to said order, they have and still continue to disregard said agreed order with said Commission and to make said improvements, except only to a limited extent, and that their conduct in reference to the compliance with said order heretofore entered by said Commission for said improvements, which order was agreed to by the complainant Company, has been negligent, and in the opinion of the affiant contemptuous and disrespectful;

That at said hearing on June 16th, 1913, as resulted in the order complained of in complainant's bill of complaint there was ample and sufficient testimony submitted to the Arizona Corporation Commission to justify the order made by them on the 23rd day of June, 1913, that a single track was insufficient to properly serve the public on the lines of the complainant Company on said West Washington Street west from Seventh Avenue, and was amply sufficient to justify the order made and entered by the said Arizona Corporation Commission to complainant to build and construct a double track line of street railway on West Washington Street in the City of Phœnix, Arizona, from the intersection of Seventh Avenue with Washington Street to Seventeenth Avenue;

That said testimony before said Commission satisfied your affiant and the other members of the Corporation Commission that the density of traffic was such as justified the order of the Corporation Commission in directing the complainant Company to double track said West Washington Street; that the testimony produced before the said Commission at said hearing further demonstrated to the satisfaction of your affiant and the other members of the
121 Arizona Corporation Commission that there are constant delays in the transportation of passenger traffic on said portion of said West Washington Street, because of the constant

switching necessary to enable the cars of the complainant Company to pass one another upon said portion of complainant's lines on said West Washington Street, and that said order of said Corporation Commission so entered as aforesaid compelling complainants to double track said portion of West Washington Street was supported by substantial evidence heard before said Corporation Commission and was consistent with and in accordance with the facts adduced at said hearing;

Affiant further states that the service to the public by complainants over said portion of said line on West Washington Street is inadequate, for the reason that there is only a single track upon the said portion of West Washington Street, and because of the entire inadequate service rendered to the public by the complainant Company in every other respect.

Affiant further says the complainant has never applied to the Arizona Corporation Commission for permission to issue security to double track said West Washington Street or to make other necessary improvements upon its said lines in the City of Phœnix, including said portion of West Washington Street now single tracked, and that no evidence has been laid before the Arizona Corporation Commission, and your affiant is informed and believes and therefore makes affidavit upon information and belief that no serious attempt has been made by said complainant Company to raise money either to double track said West portion of Washington Street or to make other necessary and called for improvements upon said line of the complainant Company.

Affiant further says that at the time of the hearing before the Arizona Corporation Commission in the style of action entitled Arizona Corporation Commission, Plaintiff vs. Phœnix Railway Company of Arizona, Defendant, Docket No. 84, which hearing was held on June 16, 1913, the affiant, S. H. Mitchell, who is the general manager of the Phœnix Railway Company, the complainant
122 in the above entitled cause of action, upon the interrogation of your affiant gave the following testimony, under oath:

"Chairman GEARY: Take the Washington line so far as traffic is concerned, how does it compare with other lines?

A. Just this division?

Q. Yes. Is it not heavier, is there not a greater volume of business on this end?

A. Than on a particular division of some other branch?

Q. Yes.

A. Well, perhaps I can answer that more intelligently by taking it as a division of the Washington Street line.

Q. Take Washington Street?

A. Well, it is about one-third.

Q. Larger?

A. No sir, it is about one-third of the Washington Street line.

Mr. COLES: I don't understand?

A. For instance, if the total receipts on Washington Street was $90.00, the West Washington division would show $30.00.

Chairman GEARY: At the time the sale was contemplated you

had data prepared, was it not, showing the receipts and volume of traffic upon the individual lines making up the system?

A. No sir, I think not, if any sale was contemplated or worked up it was done through the Los Angeles office.

Q. How does this Washington Street line compare with Indian School line?

A. Washington Street daily receipts are in the neighborhood of $100.00 and Indian School line about $75.00.

Q. And yet you are double tracking the Indian School line?

A. Yes, but we are running the Glendale cars over that too."

Your affiant further states that, upon information, resulting from the evidence produced before the Arizona Corporation Commission upon the hearing of June 16th, 1913, aforesaid, clearly shows that the conditions of the order complained of in the above entitled cause of action are clearly a public necessity and necessary to the preservation of the health and convenience of the patrons of complainant's street railway, and that the conditions of said order are, therefore, a public necessity.

W. PAUL GEARY.

Subscribed and sworn to before me this 18th day of September, 1913.

[SEAL.] E. P. WISE,
Notary Public.

My Commission expires Feb. 17, 1916.

123 Endorsements: In Equity No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., Defendants. Affidavit.

124 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Counter Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

Mrs. James H. Van De Water, being duly sworn, deposes and says, that she is a resident of the City of Phœnix, Arizona, residing at 1825 West Adams Street, and that as a resident of this vicinity of Phœnix has frequent occasions to ride upon the cars of the com-

plainant railway company, which are operated upon that line of its railway which is commonly designated and known as the West Washington Street line; that the traveling public in Phœnix, who are obliged to travel on said West Washington Street line, are constantly subjected to long delays, because of the single track operated and maintained by the complainant company on said West Washington Street between 7th Avenue and 17th Avenue; that the cars of the complainant company operated on said single track, under a system by which the cars passing in opposite directions pass on the switch and that, because of said method of operating said traffic on said West Washington Street, the traveling public is subjected to constant delays through the failure of cars to meet at the switch, and are compelled to take a much longer time to reach their destination than if said line of railway owned by the complainant on said West Washington Street was double tracked; that, in affiant's opinion, double tracking on said West Washington Street would increase the traffic and the efficiency of the service thereon; that traffic is as good on said West Washington Street line as on other parts of the
125 line belonging to complainant which is double tracked; that the traffic on said West Washington Street has been good, up to three or four months ago; that the traffic then fell off because of the strike of the employees of the complainant company, and that the traffic upon all of the lines of the complainant company in the City of Phœnix would be much greater were it not that the general public is so disgusted with the inadequacy of service given by the complainant company that they will not travel upon the lines of the complainant company unless absolutely forced to do so.

Further affiant saith not.

MRS. JAMES H. VAN DE WATER.

Subscribed and sworn to before me, this 13 day of October, 1913.

[SEAL.] E. P. WISE,
Notary Public.

My Commission expires Feb. 17, 1916.

Endorsements: In Equity No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., Defendants. Affidavit.

126 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,

vs.

W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Counter Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

Jesse L. Boyce first being duly sworn, upon his oath, deposes and says that he is a resident of the City of Phœnix, Arizona, residing at 1654 West Monroe Street, and that as a resident of this vicinity of Phœnix he has frequent occasions to ride upon the cars of the complainant railway company, which are operated upon that line of its railway which is commonly designated and known as the West Washington Street line.

Your affiant further states that both from experiences and observations, he knows that the services rendered by the complainant railway company, upon its said line, are wholly inefficient and inadequate to conveniently and safely accommodate the patrons of such lines which it attempts to serve.

127 Your affiant further states that, in his opinion, such inefficiency of service results from the inadequate equipment of the complainant railway company in operating said Washington Street line, and more particularly the failure to double track said line as required by the order of the Arizona Corporation Commission, promulgated June 23rd, 1913.

Affiant further says that it is his custom to travel on the cars of the complainant company over said west Washington Street where the same is single tracked two or three times a week in the evenings and some times in the day time, and it seems, invariably, especially during business hours, the waits are very long, some times a half hour on West 13th Avenue and West Washington Street, and that affiant thinks that this condition might be obviated by double tracking to a large extent; that in affiant's recollection, one night in January or February of 1913 a woman was thrown from complainant's cars on West Washington Street at the switch at 13th Avenue, because it was apparent that the woman thought the car was going to wait on the switch for the other car, in affiant's opinion if there had been a double track she would have known that, under the rules of the company, the car was not going to stop until it came to a corner; that, in affiant's opinion, the traffic on the complainant's lines on West Washington Street from Seventh Avenue to Seventeenth Avenue is very good and, in affiant's opinion, the traffic would warrant a double track.

Affiant further says that, in his opinion a double track would increase traffic on said portion of complainant's lines, for the reason the because of the long delays on that portion of complain-
128 ant's lines that the district traversed by said single track is prevented from building up on account of the car service; if said district was double tracked there would be more people going into said district. That affiant has been constantly delayed on said portion of complainant's line through the failure of complainant's cars to properly meet at the switches over that portion of the line of complainant on West Washington Street that is single tracked; that in affiant's opinion it is impossible to maintain a fifteen minute schedule, prescribed by the Commission on said single track, because of the many interruptions in the traffic, because of delays in failing to meet other cars which are late at the switches.

Affiant further says that in either the month of April or May of 1913 that the car that affiant was on on West Washington Street between 7th Avenue and 17th Avenue, west, had left the switch and gone quite a distance and that then the other car going west came in and the car that I was on had to back back about five or six blocks into the switch to allow the west bound car to pass, causing quite a delay; there have been several other occasions where this same incident has been to my personal knowledge.

Further affiant saith not.

JESSE L. BOYCE.

Subscribed and sworn to before me this 9th day of October, 1913.

[SEAL.] J. B. ORMOND,
Notary Public.

My Commission Expires M'ch 18, 1916.

Endorsements: In Equity No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., Defendants. Counter Affidavit.

129 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Counter Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

Frank Hilderbran, being first duly sworn, upon his oath, deposes and says that he is a resident of the City of Phœnix, and has had

frequent occasions to ride upon the cars of complainant railway company which are operated upon that line of its railway, which is commonly designated and known as the West Washington Street line; that the service upon said West Washington Street line is very slow, because of the delays incident to the switch on the single track, and that affiant prefers to walk usually, for the reason that he can walk from said portion of West Washington Street pretty nearly as quick as the car goes.

Affiant says if he was in a hurry he would take some other means of transportation to traverse said West Washington Street other than a street car; that if the car one expects to ride on
130 — West Washington Street is not on time at the switch, which very occasionally occurs, that the person desiring to travel on said car has to wait at the switch until the car arrives or walk; that up to within three or four months ago the traffic on West Washington Street was good, much better than it ever has been, the few times that affiant has ridden on the cars on West Washington Street that the cars have been crowded.

Affiant further says that the West Washington end of the city which is served by said car line of complainant on West Washington Street is growing rapidly.

Affiant further says that the traffic on said West Washington Street and other portions of the lines of the complainant company would largely increase if they would give the public of the City of Phœnix adequate service; that the cars used by complainant company upon said lines are old, antiquated, obsolete and uncomfortable and painful to ride in. Affiant is of the opinion that if the complainant should double track its line on West Washington Street from 7th Avenue west it would tend to increase the efficiency of the service upon said line, and increase the traffic upon the same.

Further affiant saith not.

FRANK HILDERBRAN.

Subscribed and sworn to before me, this 10th day of September, A. D., 1913.

[SEAL.] LEWIS T. CARPENTER,
Notary Public.

My commission expires 3/16/17.

131 Endorsements: In Equity No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., Defendants. Affidavit.

132 Copy.

In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,

vs.

W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Counter Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

James P. Bates, being first duly sworn, deposes and says that he is a resident of the City of Phœnix, Arizona, residing upon Willett Street in the City of Phœnix and is bailiff for the Supreme Court of Arizona and as a resident of this vicinity of Phœnix and as bailiff of the Supreme Court of Arizona he has frequent occasion to ride upon the cars of the complainant railway company, which are operated upon that line of its railway which is commonly designated and known as the West Washington Street line; that he has had occasion in his business, daily, or approximately daily, to use the street car line of the complainant company on said West Washington Street; that he passes over said Washington Street line four times a day, going and coming; that on many times he is
133 caused inconvenience at the switches on West Washington Street on the single track, for the reason that the cars do not meet; that because of the duties of his office he has certain times to arrive at his destination and that because of said inconvenience and the cars failing to meet at the switches, he is often times late at his destination, and on several occasions, in order to arrive at his destination in time, has had to get off the car and walk; that at the switches on West Washington Street from Seventh Avenue, west, the car has to wait for the other car to pass and that they are often delays, because one car does not meet the other at the switch on time, and that because of this, on occasions he has been obliged to get off and walk to the Capitol and on one or two occasions, after leaving the car upon which he was riding, bound for the Capitol building, has been able to arrive at the Capitol building by walking before the car upon which he started reached the same destination; on other occasions the car going from the Capitol on West Washington Street has passed affiant when affiant was leaving the Capitol building, affiant not being able to make connection at the point where the company's lines pass the Capitol building, and, yet because of the single track maintained by complainant on West Washington Street, and the long delays of the cars at the switches, affiant

has been able to walk from the Capitol building, following the car to where the switch is located and board the same there; that because of said constant delays on said single tracked line of the company's lines on West Washington Street, affiant generally figures that it will take an hour for him to reach the Capitol building from his residence by traveling on the complainant's lines, though affiant avers it to be the truth that he can walk the distance between his residence and the Capitol building within an hour.

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While affiant is not a railroad man, it is apparent to the layman and to a person not acquainted with the details of running street railways that if West Washington Street was double tracked these constant delays at the switches would not occur upon West Washington Street from Seventh Avenue west.

Affiant says that the traffic on the cars on West Washington Street from Seventh Avenue, west, is and has been, with the exception of the last two or three months, very good—that there is a right smart traffic on the cars; that during the last three or four months traffic on said line of the complainant has been light, for the reason that the employees of complainant company have been on a strike and that because of the inadequate service given by the complainant company to the traveling public in the City of Phœnix the said traveling public has become disgusted with the said complainant company and has refused to ride upon its cars in the City of Phœnix, except when absolutely compelled to do so.

Further affiant saith not.

JAMES P. BATES.

Subscribed and sworn to before me, this 29th day of September, 1913.

[SEAL.] LEWIS T. CARPENTER,
Notary Public.

My commission expires, 3/16/1917.

Endorsements: In Equity. No. E-11. In the District Court of the United States in and for the District of Arizona. *Phœnix Railway Company of Arizona.* Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., Defendants. Counter Affidavit.

135 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Counter Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

Chas. J. McElroy, first being duly sworn, upon his oath, deposes and says that he is a resident of the City of Phœnix, engaged in the real estate business and is a member of the council of said City, and as such is competent to make the following affidavit:

That the community served by the West Washington Street line of the complainant railway company is a rapidly growing section of the City of Phœnix, and that the growth of said section approximates that of any other section of said City.

Your affiant further states that, in his opinion, said section of the City of Phœnix will continue in its rapidity of growth.

136 Further affiant saith not.

CHAS. J. McELROY.

Subscribed and sworn to before me this 6th day of October, A. D. 1913.

[SEAL.] WILLIE LOVETT,
Notary Public.

My Commission Expires June 18, 1917.

Endorsements: In Equity. No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary et al., Defendants. Counter Affidavit.

187 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

J. B. Ormond being first duly sworn, deposes and says that he is the Deputy Auditor of the State of Arizona, and his office is located at the Capitol building in the City of Phœnix, State of Arizona, and therefore, is competent to make this affidavit:

That he has in his department the account of the various state officers and employees of the state officers who are located in the Capitol Building in the City of Phœnix, State of Arizona, and that the number of state officers and employees located in the Capitol Building, who are obliged to go to and from the Capitol Building in the City of Phœnix each day are approximately ninety.

J. B. ORMOND.

Subscribed and sworn to before me, this 15th day of October, 1913.

[SEAL.] WILLIE LOVETT,
Notary Public.

My Commission Expires June 18, 1917.

Endorsements: In Equity. No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Plaintiff, vs. W. Paul Geary et al., Defendants. Affidavit.

138 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Counter Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

W. Sangster, being first duly sworn, deposes and says:

That he is an expert accountant, having worked in the accounting department of the Atchison, Topeka & Santa Fe from the month of November, 1909, until the first of September, 1913, and that he is official accountant of the Corporation Commission of the State of Arizona, and therefore competent to make this affidavit:

That with the view of analysing the report of C. E. Newcomber — the operating expenses of the complainant company, a copy of which report of the said C. E. Newcomber is attached to his affidavit filed by complainant in the above entitled proceeding, your affiant personally examined, analysed, investigated and went over the book of accounts of the complainant company for the two fiscal years ending July 1, 1912, and July 1, 1913.

After investigating the operating expenses of the Phœnix Railway Company of Arizona for the fiscal years ending July 1st, 1912, and July 1st, 1913, I have made the following corrections in their statement:

For the fiscal year ending July 1st, 1912—Add to Engineering and Superintendence $245.30, account charges omitted. Deduct from maintenance of Way $332.80 account book figures supporting a charge of $27,036.37 instead of $27,369.17 as reported. Deduct from Maintenance of Electric Lines $3.00 account sale of material, credit being allowed on their books but not on their statement of expenses. Deduct from Maintenance of Cars $252.35 ac-
139 count June, 1911, charge included through error. Deduct from Maintenance of Electric Equipment on Cars $218.60; $217.60 account June, 1911, charges included through error and $1.00 credit for sale of material allowed on their books but not on statement. Deduct from Conductor and Motorman $1,645.80 account pay roll of Motormen and Conductors for June, 1911, included through error. Add to General Expenses $146.38, made as follows: Add $620.00 account office pay roll for June, 1912, omitted through error and deduct $473.60 account June, 1911, pay roll included through error. Add to Power account $211.90 as follows: Add $452.10 for power received in June, 1912; add $1,389.70 ac-

count City Line Power received for months of April, May and June, 1912. Deduct $253.75 account credit due from sale of power to the State and others; deduct $1,376.15 account power received during the month of June, 1911. Add to Miscellaneous Transportation Expenses $182.40 omitted through error. Deduct from Store and Stable Expense $2.00 account credit allowed on books but not on their statement. Deduct the total charge to Betterments, $4,223.40, as their books show that this amount was charged to Cost of Road and Franchise which is a Betterment Account. This amount should not have been charged to operation on their statement as it was not charged to operation on their books. An analysis of the charge shows that this amount was expended for Ballast and Rail Bonding during the months of August, September, October and November, 1911. Deduct from Sub-station expense $1,177.70 account deprec-ation charged to operation. The Interstate Commerce Commission does not permit a charge to operation for deprec-ation, neither is it a proper charge to operation, therefore I have eliminated this amount. Add to Maintenance of Sub-station Equipment $28.57 account amount shown on their books but not included in their statement.

For the Fiscal Year ending July 1st, 1913, Deduct from Maintenance of Cars $5,000.00 account Car deprec-ation charged to operation, the same not being a proper operating expense. The Interstate Commerce Commission make no provision for a charge to operation for deprec-ation on equipment and this amount was eliminated for that reason. Deduct from General Expenses $645.00 as
140 follows: $620.00 account June 1912 pay roll for the office transferred to the former fiscal year's operation. $25.00 account credit received for duplicate charge to this account but amount was not taken into consideration in rendering the report. Deduct from Power Account $714.05 as follows: Account error in allocating charge to the proper fiscal year deduct $452.10 and $1,389.70, power was received during the fiscal year ending July 1st, 1912, and through error was charged to the fiscal year ending July 1st, 1913. Add $1,097.75 for power received May 28th, to June 30th, 1913, and $30.00 for power received during May 1913. Deduct from Miscellaneous Transportation Expenses $18.70 account credit made to this account on their books but no credit allowed when statement was made. Deduct from Store and Stable Expenses $266.80 account credit allowed on their books but no credit allowed when statement of operating expenses was made. Deduct from Sub-station Expense $104.75 account books not supporting the charge of $110.40 as shown on their report. Add to Maintenance of Sub-station Equipment $4.78 account appearing on their books but not charged on their statement. Deduct from Distribution System $798.71, account now construction, and not chargeable to operation. Their books show that this amount was expended for new distributing system for new lines constructed. Add to Superintendence of Equipment Account $100.00, this amount appears on their books but was not included on their statement. Add to Superintendence of Way account

$240.00, this amount appears on their books but was not included in their statement.

The result of said analysis is embodied in the account hereunto annexed and made a part of this affidavit, the net result, assuming that their estimate of earnings is correct, shows the net earnings of the complainant company for the year ending July 1st, 1912 to be $2,149.94 and the net earnings for the complainant company for the year ending July 1st, 1913 to be $9,528.29.

Affiant further says that the operating expenses set forth in the said Newcomber's affidavit, and as corrected by this affidavit, for the said two fiscal years do not constitute a fair test of the average operating expenses of the complainant company, for the reason
141 that for many years prior to the year ending July 1st, 1912, the lines of the complainant company were allowed to go without practically any repair whatever, and that many of the repairs charged up to the operating expenses for the two fiscal years herein referred to are permanent repairs, and the result of prior neglect to repair for several years, and that a large portion of said repairs were largely re-construction work and should last for years without further repair, and that the cost of the same in estimating the average operating expense should be spread over a series of years.

W. N. SANGSTER.

Subscribed and sworn to before me this 15th day of October, 1913.

[SEAL.]

E. P. WISE,
Notary Public.

My Commission expires Feb. 17, 1916.

142 *Statement of Operating Expenses, Phœnix Railway Company of Arizona.*

Operating accounts.	July 1, 1911, to July 1, 1912.	July 1, 1912, to July 1, 1913
Engineering & Superintendence	325.30	.....
Maintenance of Way	27,036.37	23,543.26
Maintenance of Electric Lines	2,819.11	3,951.45
Maintenance of Cars	4,455.60	2,872.16
Maintenance of Elec. Equip. of cars	6,951.64	5,338.03
Misc. Equipment Expense	39.65	228.50
Traffic Expense	211.91	355.55
Sub-station Employes (Pay Roll)	650.00	780.00
Conductor & Motorman (Pay Roll)	17,746.85	25,217.45
General Expense	7,765.83	9,366.78
Power Account	17,226.05	17,048.20
Misc. Transportation Expense	2,187.74	1,788.13
Injuries and Damages	6,251.53	3,762.14
Insurance	229.80	448.25
Taxes	3,871.53	4,623.17

Stationery and Printing	511.65	194.67
Store and Stable Expense	577.00	888.08
Sub-station Expense	117.54	5.62
Maintenance of Sub-station Equipment	28.57	4.78
Superintendence of Equipment	.....	100.00
Superintendence of Way & Structure.	.....	240.00
Superintendence of Transportation...	.....	1,090.00
Interest (on Money borrowed for operation)	.....	750.00
	$99,003.67	$102,596.22
Earnings (As per Report)	101,153.61	112,124.61
Net Earnings	2,149.94	9,528.29
Total net Earnings for Two years		$11,678.23

Phœnix, Arizona, October 11th, 1913.

143 Endorsements: In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary et al., Defendants. In Equity. No. E-11. Counter Affidavit.

144 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Affidavit.

STATE OF ARIZONA,
County of Maricopa, ss:

Addie P. Ingalls first being duly sworn, on her oath, deposes and says that for the last eighteen (18) months preceeding the making of this affidavit she has been the librarian at the Carnegie Public Library situated within the City of Phœnix, County of Maricopa and State of Arizona; that said Carnegie Public Library is situated on the south side of Washington Street between 10th Avenue and 12th Avenue, and is tributary to that portion of the complainant's street railway line affected by the order of the Arizona Corporation Commission, promulgated on the 23rd day of June, 1913, which portion of complainant's street railway line is commonly designated as the "West Washington Street Line."

Your affiant further states that, as such librarian of the Carnegie Public Library, it is incumbent upon her, in the performance of

her duties, to prepare and keep a list of both the number of persons who actually frequent said Library each day of each month of the year, with the exception of National holidays, for the purpose of reading, and also the number of persons who actually frequent said Library for the purpose of borrowing the literature offered to the public by said Library; that from her records, which are now in her possession, it appears that during the months of March to September, 1913, inclusive, the following number of readers frequented said Library:

Date.	Readers.	Average per day.
March, 1913	3,143	120
April, 1913	3,133	120
May, 1913	3,223	123
145		
June, 1913	1,647	65
July, 1913	1,283	49
Aug., 1913	978	37
Sept., 1913	972	38
Total	14,378	

That it appears during the months of March to September, 1913, inclusive, the following number of books were loaned to the patrons of said Library:

Date.	Readers.	Average per day.
March, 1913	3,046	117
April, 1913	2,764	106
May, 1913	3,128	120
June, 1913	3,355	134
July, 1913	3,538	136
Aug., 1913	3,271	121
Sept., 1913	2,791	111
Total	21,893	

Your affiant further states that under the ruling of the complainant company its cars, traversing the west end of Washington Street line, stop in front of said Library for the convenience of the patrons of said Library, and that, in her belief, a great majority of the patrons of said Library, residing in the City of Phœnix and elsewhere, ride upon complainant's cars in going to and from said Library.

Your affiant further states that aside from the literary benefits of said Library, it is surrounded by a public park, which offers free recreation and enjoyment to any person who may desire to partake thereof, and that numerous persons use complainant's lines for the purpose of partaking of such free recreation and enjoyment so offered to them by said public park which surrounds said Library.

Your affiant, however, does not keep a record of the number of persons who partake of the advantage of said park and for that reason, therefore, cannot state the actual number, but, to her own knowledge, she states that the number of such persons is great and a majority thereof use complainant's railway in so doing.

146 Your affiant further states that to her own knowledge and belief the facilities and schedule of the complainant's railway line, commonly known as the West Washington Street Line, and operated in front of said Library, are wholly inadequate and insufficient to conveniently supply the public need, and, in this respect, your affiant states that, of her own knowledge and belief complainant has not and does not operate its cars upon a regular and punctilious schedule, but that in many instances the patrons of said Library are compelled to wait much longer than the announced schedule for a car of complainant company, thereby causing vexatious and burdensome delays.

Your affiant further states that, in her opinion, a compliance with the order of the Arizona Corporation Commission, promulgated June 23rd, 1913, which order commands the complainant company to build and construct a double track line of street railway on West Washington Street in the City of Phœnix, Arizona, from the intersection of 7th Avenue with Washington Street to 17th Avenue, will greatly facilitate the operation of the cars upon complainant's street railway between the intersection of 7th Avenue and West Washington Street to 17th Avenue and that, in her opinion, the order of the Arizona Corporation Commission is a public necessity which is warranted by the traffic upon said West Washington Street line. And, in her opinion, if said order of the Corporation Commission is complied with by the complainant it would greatly facilitate the operation of complainant's cars, and thereby not only render to the public sufficient and adequate service, but would also increase the volume of traffic upon complainant's lines.

Further your affiant saith not.

ADDIE P. INGALLS.

Subscribed and sworn to before me, this 15th day of October, 1913.

[SEAL.] E. P. WISE,
Notary Public.

My commission expires Feb. 17, 1916.

Endorsements: In Equity. No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary et al., Defendants. Affidavit.

147 Endorsements: In Equity. No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary et al., Defendants. Affidavits filed by defendants in opposition to Affidavits filed by complainant. Service of a copy of within affidavits admitted this 17th day of October, 1913. Chalmers & Kent, Att'ys for Complainant. Filed Oct. 17, 1913. George W. Lewis, Clerk, by E. D. Botts, Deputy.

148 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Order.

This cause having come on to be heard upon the complainant's application for an injunction pendente lite, and the same having been submitted upon the complaint and affidavits and upon the arguments of Counsel, and the Court having duly considered the same, and it appearing to the Court that complainant has failed to show sufficient ground for the granting of an injunction pendente lite:

It is hereby ordered that the application herein made by complainant for an injunction pendente lite be denied.

And complainant having given notice in open Court of an appeal to the Supreme Court of the United States from the decision and order of this court denying said application for an injunction pendente lite, and further having made application that pending said appeal to the said Supreme Court of the United States further proceedings herein be stayed:

It is hereby ordered that said appeal be allowed and that pending said appeal the temporary restraining order heretofore granted herein be continued in force and effect, provided that said appeal be perfected within thirty days from the date hereon and that complainant within fifteen days from the date hereof files with the clerk of this court a bond to be approved by the Judge of this court in the sum of Five Thousand ($5,000) dollars conditioned that in case complainant shall fail to sustain its said appeal to the Supreme Court of the United States from said order of this court afore-
149 said complainant will pay to defendants any and all damages which will accrue to defendants by reason of such appeal.

Dated this 20th day of November, 1913.

WM. W. MORROW,
Circuit Judge.
WM. C. VAN FLEET,
U. S Dist. Judge.
WM. H. SAWTELLE, *Judge.*

Endorsement: Filed Nov. 24, 1913. George W. Lewis, Clerk, by Frank E. McCrary, Deputy.

150 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Bond.

Know all men by these presents:

Whereas, the above named complainant has appealed to the Supreme Court of the United States from the Decision and Order of this Court, dated November 20th, 1913, denying complainant's application for an injunction pendente lite,

Now therefore, we, the Phœnix Railway Company of Arizona, as principal and the Maryland Casualty Company, as surety, in consideration of the premises, do jointly and severally undertake and agree, in the sum of Five Thousand Dollars ($5,000.00), to pay to the defendants above named any and all damage, not exceeding Five Thousand Dollars ($5,000.00), which may accrue to defendants by reason of complainant taking said appeal to the Supreme Court of the United States,

If and Provided; that said complainant shall fail to sustain its said appeal.

Witness our hands hereto, this 28 day of November, 1913.

PHŒNIX RAILWAY COMPANY OF ARIZONA, *Complainant,*
By CHALMERS & KENT, *Attorneys.*
MARYLAND CASUALTY COMPANY,
By A. J. BENT, *Attorney.*

Countersigned by
O. E. SCHUPP, *Attorney.*

Approved this 29th day of November, 1913.
WM. H. SAWTELLE, *Judge.*

Approved as to form.
[SEAL.]
G. P. BULLARD,
Attorney General.

151 Endorsements: E-11. Bond of Maryland Casualty Company. No. — on behalf of Phœnix Railway Co. of Arizona. in District Court of the United States in and for the District of Arizona. Phœnix Railway Co. of Arizona. vs. W. Paul Geary, et al., E-11. Filed Nov. 29, 1913. George W. Lewis, Clerk.

152 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Assignments of Error.

Now comes the Phœnix Railway Company of Arizona, complainant, and makes and files the following assignment- of error upon its appeal to the Supreme Court of the United States from the order of the District Court of the United States in and for the District of Arizona denying the complainant's application for a temporary injunction.

The District Court of the United States erred in making the order denying the temporary injunction in this case for the following reasons, to-wit;

I.

The complainant's bill of complaint and the affidavits filed in this cause showed sufficient ground for a temporary injunction.

II.

Complainant's bill of complaint and affidavits filed in this cause showed that the order of the Arizona Corporation Commission complained of in the bill of complaint, and sought to be enjoined is unreasonable and not required by the needs of the people, and is in violation of the Fourteenth Amendment to the Constitution of the United States by depriving the complainant of property without due process of law, and denying the plaintiff the equal protection of the law, and further showed that irreparable injury would result to the complainant by the denial of said injunction.

153 III.

Complainant's bill of complaint and the affidavits filed in this cause showed that complainant is making no return whatever upon the value of its property, and the order of the Arizona Corporation Commission complained of and sought to be enjoined would prevent the complainant from making a fair return or any return whatever upon the value of the property, and that said order is not within the power of the Corporation Commission of Arizona to make.

IV.

The bill of complaint and the affidavits filed in this cause show grounds sufficient to require the granting of an injunction pendente

lite; and further show that the right to a final hearing will be denied complainant and irreparable damage suffered by complainant, by the refusal to grant said injunction pendente lite; and further show that by granting said injunction pendente lite no injury will result to the defendants.

Wherefore the complainant prays that the said order be reversed and the District Court of the United States in and for the District of Arizona be instructed to enter the order prayed for by said bill; for such other further relief as to the Court may seem fit.

PHŒNIX RAILWAY COMPANY OF ARIZONA,
By CHALMERS & KENT,
Its Solicitors.
L. H. CHALMERS.
EDWARD KENT.

Endorsements: No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., defendants. Assignments of Error. Filed Nov. 29, 1913. George W. Lewis, Clerk.

154 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To W. Paul Geary, Frank A. Jones, and Amos W. Cole, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, within sixty days from the date hereof, pursuant to an appeal filed in the Clerk's office of the District Court of the United States in and for the District of Arizona, wherein the Phœnix Railway Company of Arizona is plaintiff, and you are defendants in error, to show cause, if any there be, why the error in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 6th day of December, in the year of our Lord one Thousand Nine Hundred Thirteen.

WM. H. SAWTELLE,
Judge of the District Court of the United States in and for the District of Arizona.

Service accepted this 6th day of December, 1913.

G. P. BULLARD,
Attorney for All Defendants.

155 Endorsement: In Equity No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, Frank A. Jones, and Amos W. Cole, members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants. Citation on Appeal. Filed Dec. 6, 1913. George W. Lewis, Clerk.

156 In the United States District Court in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Præcipe for Transcript of Record on Appeal.

To George W. Lewis, Esq., Clerk of the United States District Court in and for the District of Arizona:

You will please, in accordance with the order and citation in the above entitled cause, prepare a transcript of the record in this cause to be filed in the office of the Clerk of the Supreme Court of the United States, and include in said transcript on appeal the following pleadings, proceedings, and papers on file, to-wit:

Bill of Complaint.

Order granting Restraining Order, dated August 28, 1913.

Subpœna and Marshal's return.

Notice of application for temporary injunction, dated Aug. 29, 1913.

Order extending date of hearing from Oct. 2, 1913, to Nov. 17, 1913.

Affidavits of C. E. Newcomer, subscribed and sworn to Aug. 28, 1913.

Affidavit of S. H. Mitchell, subscribed and sworn to Aug. 27, 1913.

2 affidavits of J. P. Gould, subscribed and sworn to Aug. 28, 1913.

Affidavit of Chas. Woolstenhulme, subscribed and sworn to Nov. 5, 1913.

Affidavit of J. P. Gould, subscribed and sworn to Nov. 5, 1913.

Affidavit of D. C. Showers, subscribed and sworn to Nov. 5, 1913.

Affidavit of S. H. Mitchell, subscribed and sworn to Nov. 5, 1913.

Affidavit of W. B. Trent, subscribed and sworn to Nov. 5, 1913.

Affidavit of Oril Snow, subscribed and sworn to Nov. 5, 1913.

Affidavit of S. R. Hodges, subscribed and sworn to Nov.
157 5, 1913.

Affidavit of C. E. Newcomer, subscribed and sworn to Nov. 6, 1913.

Affidavit of W. R. Allen, subscribed and sworn to Nov. 6, 1913.

Affidavit of Chas. Woolstenhulme, subscribed and sworn to Nov. 11, 1913.

Affidavit of S. H. Mitchell, subscribed and sworn to Nov. 11, 1913.

Certificate of Service of the United States Marshal, C. A. Overlock, dated September 6, 1913.

Bond of Complainant on granting of restraining order.

Affidavit of C. R. Price, subscribed and sworn to Sep. 29, 1913.

Affidavit of Geo. P. Bullard, subscribed and sworn to Oct. 16, 1913.

Affidavit of W. Paul Geary, subscribed and sworn to Sep. 18, 1913.

Affidavit of Mrs. Jas. H. Van De Water, subscribed and sworn to Oct. 13, 1913.

Affidavit of Jesse L. Boyce, subscribed and sworn to Oct. 9, 1913.

Affidavit of Frank Hildebran, subscribed and sworn to Oct. 10, 1913.

Affidavit of James P. Bates, subscribed and sworn to Sep. 29, 1913.

Affidavit of Chas. J. McElroy, subscribed and sworn to Oct. 6, 1913.

Affidavit of Elmer Warren, subscribed and sworn to Sep. —.

Affidavit of J. P. Ormand, subscribed and sworn to Oct. 15, 1913.

Affidavit of W. Sangster, subscribed and sworn to Oct. 15, 1913.

Affidavit of Addie P. Ingalls, subscribed and sworn to Oct. 15, 1913.

Order denying application for temporary injunction and allowing appeal, dated November 20, 1913.

Bond on appeal.

Assignments of Error.

Citation on appeal.

Præ. for transcript of record on appeal.

Order to certify transcript of record.

Prayer for reversal.

PHŒNIX RAILWAY COMPANY OF ARIZONA,
By L. H. CHALMERS,
EDWARD KENT,
Its Attorney-.

Received a copy of the above Præcipe this 6th day of December, 1913.

G. P. BULLARD,
Attorney for All Defendants.

158 Endorsement: In Equity No. E-11. In the United States District Court in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., Defendants. Præcipe for Transcript of Record on Appeal. Filed Dec. 6, 1913. George W. Lewis, Clerk.

159 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Order.

Complainant having made application for an appeal to the Supreme Court of the United States from the order of this Court denying the complainant's application for a temporary injunction dated November 20, 1913, and said appeal having been duly allowed by order of this Court, and complainant having filed its assignment of errors herein and its bond, which said bond has been duly approved; now, on motion of Chalmers and Kent, Solicitors for complainant,

It is ordered, that the Clerk prepare and certify a transcript of the record in this case upon complainant's said appeal, and forward the same to the Clerk of the Supreme Court of the United States.

Dated November 29th, 1913.

WILLIAM H. SAWTELLE, *Judge.*

Endorsement: No. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., Defendants. Order. Filed Nov. 29, 1913. George W. Lewis, Clerk.

160 In the Supreme Court of the United States.

In Equity. No. E-11.

PHŒENIX RAILWAY COMPANY OF ARIZONA, Appellant,
vs.
W. PAUL GEARY et al., Appellee.

Prayer for Reversal.

And now comes the Phœnix Railway Company of Arizona, the appellant, and prays for a reversal of the order of the District Court of

the United States in and for the District of Arizona in the action brought by the Phœnix Railway Company of Arizona, complainant, vs. W. Paul Geary, et al., defendants; and also prays that the District Court of the United States in and for the District of Arizona be directed to enter the temporary injunction prayed for by said bill of complaint, and for such other and further relief as to the Court may seem fit.

PHŒNIX RAILWAY COMPANY OF ARIZONA.
By CHALMERS & KENT, *Its Attorneys.*
L. H. CHALMERS.
EDWARD KENT.

Endorsement: In Equity No. E-11. In the Supreme Court of the United States. Phœnix Railway Company of Arizona, Appellant, vs. W. Paul Geary, et al., Appellee. Prayer for Reversal. Filed Dec. 6, 1913. George W. Lewis, Clerk.

161 In the District Court of the United States in and for the District of Arizona.

At a Regular Term, To wit, the October, 1913, Term of the District Court of the United States in and for the District of Arizona, Held at the Court-room of said Court in the City of Phœnix, State of Arizona, on Tuesday, the 16th Day of December, A. D. 1913.

Honorable William H. Sawtelle, District Judge, Presiding.

Present:

D. N. Willits, Deputy United States Marshal.
O. T. Richey, Assistant United States Attorney.
A. L. Cummings, Bailiff.
George W. Lewis, Clerk.

Court was duly opened by the officers according to law.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Upon application of the complainant herein, it is ordered that the complainant be given an extension of fifteen days from the expiration of the thirty days provided by law, within which to have prepared and transmitted to the clerk of the Supreme Court of the United States at Washington, D. C., the certified copy of the record upon appeal in this case, it appearing that the thirty days provided by law is not sufficient for the purpose.

162 *Certificate of Clerk of United States District Court to Transcript of Record.*

UNITED STATES OF AMERICA,
District of Arizona, ss:

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify that the foregoing pages from 1 to 161 inclusive constitute a true, complete and correct copy of the record, assignments of error, and of all proceedings had in the case of Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., defendants, being case No. E-11, of the files of this Court, as the same are included in the præcipe filed by the appellant in this cause and heretofore set out in this record, as the said record, assignments of error and proceedings remain on file and of record in the said District Court, no præcipe having been filed herein by the appellees, and I also annex and transmit herewith the original Citation filed in this cause and a true copy of the opinion of the Court filed therein, and I also annex hereto a certified copy of the order of said Court extending the time within which to prepare and transmit to the Clerk of the Supreme Court the transcript of record herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, at the City of Phœnix, in said District of Arizona, this 27th day of December, A. D., 1913, and of the Independence of the United States of America the one hundred and thirty-eighth.

[Seal United States District Court, District of Arizona.]

GEORGE W. LEWIS,
Clerk United States District Court
for the District of Arizona.

163 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To W. Paul Geary, Frank A. Jones, and Amos W. Cole, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, within sixty days from the date hereof, pursuant to an appeal filed in the Clerk's office of the District Court of the United States in and for the District Court of Arizona, wherein the Phœnix Railway Company of Arizona is plaintiff, and you are defendants in error, to show cause, if any there be, why the error in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 6th day of December, in the year of our Lord One Thousand Nine Hundred Thirteen.

WILLIAM H. SAWTELLE,
Judge of the District Court of the United States in and for the District of Arizona.

Service accepted this 6th day of December, 1913.

G. P. BALLARD,
Attorney for All Defendants.

164 [Endorsed:] In Equity. E-11. In the District Court of the United States in and for the District of Arizona. Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, Frank A. Jones, and Amos W. Cole, members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants. Citation on Appeal. Filed Dec. 6, 1913. George W. Lewis, Clerk.

165 In the District Court of the United States in and for the District of Arizona.

At a Regular Term, To wit: the October, 1913, Term of the District Court of the United States in and for the District of Arizona, Held at the Court Room of said Court in the City of Phœnix, State of Arizona, on Tuesday, the 16th Day of December, A. D. 1913.

Honorable William H. Sawtelle, District Judge, Presiding.

Present:

D. N. Willits, Deputy United States Marshal.
O. T. Richey, Assistant United States Attorney.
A. L. Cummings, Bailiff.
George W. Lewis, Clerk.

Court was duly opened by the officers according to law.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,
vs.
W. PAUL GEARY et al., Defendants.

Upon application of the complainant herein, it is ordered that the complainant be given an extension of fifteen days from the expiration of the thirty days provided by law, within which to have prepared and transmitted to the clerk of the Supreme Court of the United States at Washington, D. C., the certified copy of the record upon appeal in this case, it appearing that the thirty days provided by law is not sufficient for the purpose.

UNITED STATES OF AMERICA,
District of Arizona, ss:

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, complete and correct copy of the order granting an extension of time within which to prepare and transmit the transcript of record in the case of Phœnix Railway Company of Arizona, Complainant, vs. W. Paul Geary, et al., defendants, Case No. E-11, made on the 16th day of December, A. D., 1913, as the same appears from the records and files of same remaining in this office.

Witness my hand and the seal of this Court affixed thereto, this 27th day of December, A. D., 1913.

[Seal United States District Court, District of Arizona.]

GEORGE W. LEWIS,
Clerk United States District Court,
District of Arizona.

166 [Endorsed:] United States District Court, District of Arizona. Phœnix Ry. Co. of Arizona, Complainant vs. W. Paul Geary, et al., Defendants. In Equity. No. E-11. Order granting an extension of time for preparing and transmitting record on appeal.

167 In the District Court of the United States in and for the District of Arizona.

Before: Honorable William W. Morrow; Honorable William C. Van Fleet; Honorable William H. Sawtelle.

In Equity. No. E-11.

PHŒNIX RAILWAY COMPANY OF ARIZONA, Complainant,

vs.

W. PAUL GEARY, FRANK A. JONES, and AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for Arizona, and Frank H. Lyman, County Attorney for Maricopa County, Arizona, Defendants.

Action to enjoin the defendant from enforcing an order of the Corporation Commission of the State of Arizona requiring the complainant to double track a certain section of a street railway owned by the plaintiff in the City of Phœnix, in the State of Arizona.

Counsel Appearing:

Messrs. Chalmers & Kent, solicitors for Complainant;
G. P. Bullard, Esq., solicitor for Defendants.

Before Morrow, Circuit Judge, and Van Fleet and Sawtelle, District Judges, Convened under the Provisions of Section 266 of the Judicial Code.

168 MORROW, *Circuit Judge*, delivered the opinion of the court, (orally):

In this case it appears from the complaint and affidavits filed in its support that the Phœnix Railway Company of Arizona owns and operates a system of street railways in the City of Phœnix; that a track of this system extends along Washington Street in that city from Sixteenth Street on the eastern boundary of the city, westerly through the business part of the city to Seventeenth Avenue on the west; that commencing at the eastern terminus of the Washington Street line, at Sixteenth Street, and then running west to Seventh Street, a distance of nine blocks, the line consists of a single track; that from Seventh Street to Seventh Avenue, a distance of fourteen blocks, in the business section of the city the line consists of a double track; that from Seventh Avenue to Seventeenth Avenue, a distance of ten blocks, the line is a single track, with a switch for a turnout

between Twelfth and Thirteenth Avenues for the passage of cars meeting at that point. At Seventeenth Avenue the line turns north in front of the State Capitol and runs one block to Adams Street and then turns on to and runs along Adams Street to Twenty-second Avenue, the western terminus of the road.

The order of the Corporation Commission which is the subject of the complaint in this case, requires the complainant to double track its line from Seventh Avenue to Seventeenth Avenue, a distance of ten blocks. In the State Capitol immediately west of Seventeenth Avenue, to which point the Corporation Commission orders
169 the extension of the double track, is located the offices of the Governor of the State and the Assembly Chambers of the State Legislature; the court-room of the Supreme Court of the state and the chambers of its judges; together with the law library of the state. There are also in the State Capitol the offices of the Land Commissioners, who hold frequent sessions; the Corporation Commission, the defendant in this case; the State Tax Commissioners; the Secretary of State and the Attorney General, with their assistants and clerks. All these people are dependent upon this single track railway from the Capitol to Seventh Avenue in the direction of the business portion of the City of Phœnix. From Seventh Avenue eastward to the business portion of the city the track is a double track. On Washington Street between Tenth and Twelfth Avenues is located the Public Library and its park, frequented by the people of Phœnix. In the vicinity of the State Capitol there is an estimated population of from 1200 to 1500. The City of Phœnix as a whole is estimated to have a population of 25,000. For these people employed at the Capitol and living in that neighborhood, a reasonably quick service is required to and from the business portions of Phœnix. The affidavits before us set forth that there are delays in the transit of the cars over the single track of the railway, by reason of the fact that there is but a single turnout for this track between Seventh Avenue and Seventeenth Avenue; that a car going either east or west arriving at the turnout between Twelfth and Thirteenth Avenues ahead of a car going in the opposite direction, must wait until the car arrives at the turnout.

It appears to the court from the evidence that this is a
170 real, substantial inconvenience to the public residing in and frequenting that part of the City of Phœnix in and around the Capitol and the public library, and we believe it to be the duty of the complainant upon the showing made upon this motion to comply with the order of the Corporation Commission and double track this line from Seventh Avenue to Seventeenth Avenue, so that the inconvenience of delays may be avoided.

It appears that the cost of the double trackage will only amount to about $13,000.00; that the value of the company's street railway property in Phœnix is something like $500,000.00. We think it would be no great hardship upon the complainant to make this improvement.

In a growing, prosperous city like Phœnix, where the population is steadily on the increase, the complainant might very properly

keep well up and abreast of the actual requirements of the population. The complainant is a public service corporation, and there is, of course, something due to the convenience of those who are compelled to use the complainant's line for transportation; to those who are employed in the state Capitol, and to those who find it necessary to visit it on either business or pleasure. In addition, there is the public library and its park on Washington Street between Tenth and Twelfth Avenues. The convenience of those who use the car line in visiting the library ought to be considered. Then there is a population of 1,200 or 1,500 in the neighborhood of the Capitol. Many of these people must go to the business section of Phœnix every day. This car line is their method of transportation and any delay in meeting cars at the turnout must be a great and perhaps at times serious inconvenience. A double track
171 would enable each car to pass on its way without any delay at the turnout between Twelfth and Thirteenth Avenues instead of waiting for the car passing in the opposite direction. We are of opinion that the complainant has not made a sufficient showing to prevent the enforcement of this order of the Commission. The Corporation Commission is authorized by Section 36, Chapter 90 of the Statutes of the State (Act approved May 28, 1912, Session Laws of Arizona, 1912, p. 521), to require Public Service Corporations, (after hearing), to make additions, extensions, repairs or improvements to, or changes in the existing plant, equipment, apparatus, facilities or other physical property of the corporation, to promote the security or convenience of the public. The order under consideration was made after a hearing and there is a presumption in favor of its reasonableness. In our opinion that presumption has not been overcome in the showing that has been made upon this hearing. But in view of the heavy penalties provided by the statute for the failure of any public service corporation to comply with its terms or the orders of the Corporation Commission we are not prepared to dismiss the bill. We think jurisdiction should be retained by the court to see that no injustice is done the complainant while complying with the order. We have every confidence in the present Attorney General, and have no doubt that so long as he remains in office he will deal reasonably and justly with the corporation pending its compliance with the order. But the affairs of men are uncertain. The present Attorney General may not remain in office. He may be called elsewhere and some one else in that office may seek to enforce the penalties of the statute against this corporation while it is proceeding in good faith to comply with the
172 order. We are dealing with a statute and not with individuals. The corporation should have sufficient time to lay the double track ordered by the commission. It cannot be done in a day. Material may have to be procured from a distance and it may be hard to secure deliveries. We know that as a general rule steel rails cannot be delivered promptly upon the order being given for them. We are of the opinion that the Attorney General and the counsel for the complainant can agree upon a reasonable time for complying with the order of the Commission, and such agree-

ment will be made an order of this court. The jurisdiction of the court is invoked, as in the Pacific Gas and Electric cases, just decided, upon the ground that the penalties of the statute are so severe and cumulative for noncompliance with the order of the Commission that the complainant cannot take any chances with its provisions except under the protection of the court, and this protection we think we should give under the circumstances.

The parties will prepare orders in accordance with the views of the court as stated.

Mr. BULLARD: I understand your Honors' order in this particular case is that the motion for an interlocutory injunction is denied but that the restraining order is kept in force?

Judge MORROW: Yes, the restraining order is kept in force until further order of the court. But that is only restraining the Corporation Commission from enforcing the pains and penalties.

Judge VAN FLEET: And, General Bullard, there will be no difficulty about yourself, representing the Commission, and the attorneys for the complainant agreeing upon a stipulation as to the
173 time when the company shall commence the work and the time within which the work shall be completed.

Mr. BULLARD: That is what I was trying to arrive at; if we agree upon that time then upon the expiration of that time the restraining order becomes automatically dissolved.

Judge MORROW: Yes, automatically dissolved and the case dismissed.

Mr. KENT: I very much regret to appear in the light of a bad loser but I am compelled, if your Honors please, to enter a notice here formally in the record of an appeal from your Honors' determination in this matter directly to the Supreme Court of the United States as provided for by statute and to ask such resief in respect to a stay of proceedings as your Honors may see fit to grant. And without taking more than just a few minutes of your time I want to explain to your Honors why it is necessary to take that action. In this case, as in many cases, there is much behind the record; there are many facts and circumstances in this case that are not proper for me to say, even now that your Honors have decided this, inasmuch as Judge Sawtelle will eventually have to try this case. If this were a mere matter of spending $13,000 to double-track this road I would bow to your Honors' decision, for I have great respect, as your Honors know, for your integrity and your wisdom; but there is much more than just this matter of double-tracking these ten blocks behind this case, and much more than the mere matter of paving these ten blocks. I can state this, and it is perfectly proper to state it because it enters into the reasons why we are going to be compelled to exhaust every legal resource
174 that we have to avoid complying with this particular order in this case, and which we must do with all respect to your Honors; I appreciate that your Honors have attempted to make something in the nature of a compromise here, but if your Honors——

Judge MORROW: No, it is hardly that. We do not think the showing is sufficient. That is all. So far as the appeal is concerned, that is entirely agreeable to us.

Mr. KENT: I would like to say a word to your Honors as to the reason why we will have to take this appeal. We want some sort of a stay of proceedings in this case so that we can take the matter to the Supreme Court of the United States. We have other trackage in Phœnix. We have, where this line diverges at Seventh Avenue, a line that runs out Seventh Avenue and Grand Avenue to the Fair Grounds. There is much greater reason for double-tracking that line running out to the Fair Grounds than there is for double-tracking the line involved in this case. We have an annual Fair down there at Phœnix and for a week at that time it is impossible to take care of the crowds.

Judge MORROW: Judge Van Fleet desires to be excused, Mr. Kent, in order to proceed with his calendar.

Mr. KENT: I should very much like to have Judge Van Fleet remain here to listen to this statement, it will not take more than two or three minutes to make it. And we have a Second Avenue line, a single track, and the Brill line, a single track. If your Honors had had time to read the evidence presented to the Corporation Commission you would have found that it had, upon the complaint of six or eight persons who say they have been inconvenienced entered an order requiring us to double-track this
175 particular line. We cannot contest that in the state courts. We cannot hereafter contest it in the federal court because this decision will be quoted against us as a precedent. Your Honors understand that this decision ends the case——

Judge SAWTELLE: Oh, no, you cannot assume that this court will sustain the Commission if they order you to double-track all those lines.

Mr. KENT: Why not? You have sustained it here now when only six or eight people have said it was an inconvenience.

Judge SAWTELLE: Our decision is not based on the fact that six or eight people have said that it was an inconvenience. We have concluded that upon the showing made here this court cannot say that the order of the Corporation Commission is an unreasonable order.

Judge VAN FLEET: Yes, that is all we have concluded.

Mr. KENT: This will be a precedent for the next time.

Judge VAN FLEET: It cannot be a precedent for a case based on different circumstances. We do not hold that you have no right to appeal to the federal courts for relief; we simply say that your showing here is not sufficient.

Mr. KENT: That is exactly what we are complaining of. We never can have a showing that is more complete than our showing here. Six or eight people say it is an inconvenience; we have shown by the schedules that the cars have run absolutely on time except perhaps in one or two instances. We never could have a more complete showing.

Judge MORROW: Well, we differ with you, Judge Kent, upon that feature of the case.

Judge SAWTELLE: There is no state of facts that can serve as a precedent to a court in deciding a question of law unless
176 the second set of facts presented in the second case are absolutely identical with those in the first case.

Mr. KENT: We want an order, if your Honors will grant it, in some way staying these proceedings until we can take this appeal.

Judge MORROW: We will do that. That has been done heretofore. Matters have heretofore been stayed in order to allow of an appeal to the Supreme Court. The courts have approved such a course.

Mr. KENT: Yes, your Honor; it seems to be within Rule 36 of the Supreme Court.

Judge MORROW: What amount of bond would you suggest?

Mr. KENT: We already have a bond on the temporary restraining orders. Would your Honors allow the temporary restraining order to remain in force pending this appeal?

Judge SAWTELLE: What was the amount of the bond on the restraining order?

Mr. KENT: $2,000.

Judge SAWTELLE: It seems to me there should be a larger bond than that.

Judge MORROW: We will fix the bond at $5,000.

Mr. KENT: Then the order will be denying the application for an injunction but the restraining order will be continued in force pending an appeal to the Supreme Court and the bond will be in the sum of $5,000.

Judge MORROW: Yes, providing that the appeal is taken within 30 days.

Mr. KENT: There will be no trouble about that, except perhaps the question of printing. We will be perfectly willing to
177 say 30 days and if there is any difficulty about it I suppose we will have no trouble in getting an extension.

Judge MORROW: Very well.

UNITED STATES OF AMERICA,
District of Arizona, ss:

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, complete and correct copy of the opinion filed in this Court on the 27th day of December, A. D. 1913, in the case of Phœnix Railway Company of Arizona, complainant, vs. W. Paul Geary, et al., defendant, Case No. E-11, as the same appears of record and on file in this office.

Witness my hand and the seal of this Court affixed thereto, this 27th day of December, A. D. 1913.

[Seal United States District Court, District of Arizona.]

GEORGE W. LEWIS,
Clerk of the United States District Court
for the District of Arizona.

Endorsed on cover: File No. 24,006. Arizona D. C. U. S. Term No. 330. Phœnix Railway Company of Arizona, appellant, vs. W. Paul Geary, Frank A. Jones, and Amos W. Cole, members of the Corporation Commission of the State of Arizona, et al. Filed January 7th, 1914. File No. 24,006.

Supreme Court

OF THE

United States

October Term, 1914.

No. 46.

Appeal from the United States District Court for the Southern District of Georgia.

Brief of Appellant

Louis H. Chamlee,
Berrien Kerr,
Floyd M. Sharp,
Alex. Barrow,
Irving Barrow,
E. W. Clancy,
Solicitors for Appellant.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1915

No. 48

PHOENIX RAILWAY COMPANY OF ARIZONA, Appellant, vs. W. PAUL GEARY, FRANK A. JONES AND AMOS W. COLE, Members of the Corporation Commission of the State of Arizona; GEORGE P. BULLARD, Attorney General for Arizona, and FRANK H. LYWAN, County Attorney, for Maricopa County, Arizona, Appellees.	Brief of Appellant.

STATEMENT OF THE CASE.

On June 23rd, 1913, an order was made by the Corporation Commission of the State of Arizona directing the appellant to double track its line of street railway on West Washington Street in the City of Phoenix, Arizona, from the intersection of Seventh Avenue with said Washington Street to Seventeenth Avenue, a distance of ten blocks (T. R. p. 14). The order directed the construction of this double track to be commenced within thirty days from the date of the order and to be completed on or before the 1st day of September, 1913.

On July 3rd, 1913, the appellant filed with the Corporation Commission its petition for a rehearing, stating therein the respects wherein it considered said order to be unreasonable and unlawful and in violation of the Constitution of the United States. This petition for a rehearing was denied by the Commission by an order entered on August 12th, 1913, and the order denying the petition directed the work of construction to be commenced on or before September 1st, 1913, and to be completed on or before December 1st, 1913. After the denial by the Corporation Commission of its motion for a rehearing, the appellant filed its bill of complaint in the District Court of the United States, in and for the District of Arizona, praying that the order of the Arizona Corporation Commission be declared null and void and in contravention of the Constitution of the United States, and that the defendants be temporarily and permanently enjoined from in any way or manner enforcing or attempting to enforce the said order or any part thereof, and from instituting or causing to be instituted any suit, prosecution or proceeding to enforce the same or any part thereof, or for the recovery of fines or penalties on account of any violation or refusal to obey or observe said order. The bill of complaint alleged that the order of the Corporation Commission was unjust and unreasonable for the reason that the service rendered on said Washington Street by the appellant was adequate and efficient, and that the construction of the double track ordered was not required by the needs of the people using the car line on said

street; that to comply with the order would cause the expenditure by appellant of almost Fourteen Thousand Dollars ($14,000.00); that the operating expenses of appellant exceeded its revenues and that it had been operating at a loss; that it was unable to make this additional expenditure, and that compliance with the order would prevent the appellant from making a fair return, or any return at all, upon the value of its property; the bill of complaint further set forth the severe penalties provided by the statutes of Arizona for non-compliance with the orders of the Corporation Commission, and that the order in question was not within the power of the Commission to make and was in violation of the 14th Amendment to the Constitution of the United States.

Among the provisions of the statutes of Arizona prescribing penalties for violations of the orders of the Corporation Commission, as set forth in the appellant's bill of complaint, (T. R. pp. 7-11), are the following:

Revised Statutes of Arizona, 1913, Civil Code.

> "2352. (a) Any public service corporation which violates or fails to comply with any provision of the Constitution of this state or of this chapter, or which fails, oimts or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement or any part or provision thereof, of the commission, in a case in which a penalty has not hereinbefore been provided for such public service corporation, is subject to a penalty of not less than one

hundred dollars nor more than five thousand dollars for each and every offense.

(b) Every violation of the provisions of this chapter, or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

"2353. Every officer, agent or employee of any public service corporation, who violates or fails to comply with, or procures, aids, or abets any violation by any public service corporation of any provision of the constitution of this state or of this chapter, or who fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement or any part or provision thereof, of the commission, or who procures, aids, or abets any public service corporation in its failure to obey, observe, and comply with any such order, decision, rule, direction, demand, or requirement, or any part or provision thereof, in a case in which a penalty has not hereinbefore been proivded for such officer, agent or employee, is guilty of a misdemeanor and upon conviction thereof is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or both such fine and imprisonment.

"2354. Every corporation, other than a public service corporation, which violates any provision of this chapter or which fails to obey, observe, or comply with any order, decision, rule, direction, demand or requirement, or any part or provision thereof, of the commission, in a case in which a penalty has not hereinbefore been provided for such corporation, is subject to a penalty of not less than one hundred dollars nor more than five thousand dollars for each and every offense.

"2357. In case any public service corporation, corporation or person shall fail to observe, obey or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or portion thereof, of the commission, or any commissioner, such public service corporation, corporation or person shall be in contempt of the commission and shall be fined by the commission a sum not less than one hundred dollars nor more than five thousand dollars, to be recovered before any court of competent jurisdiction, in this state.

"Procedure had in such contempt proceedings shall be the same as in courts of record in this state. The remedy prescribed in this section shall not be a bar to or affect any other remedy prescribed in this chapter, but shall be cumulative and in addition to any other remedy or remedies."

> "2344. All rules, regulations, orders, charges and decrees of the commission shall remain in full force and effect pending a final decision of the court with reference thereto. No order staying, restraining or suspending any order, rule, regulation, charge, or decree of the commission shall be made by any court of this state."

On August 28, 1913, Judge Sawtelle of the United States District Court, in and for the District of Arizona, on the bill of complaint and affidavits, granted a temporary restraining order (T. R. pp. 17, 18) under the provisions of Section 266 of the Judicial Code, Act of March 3, 1911, chapter 231, said Act being an Act entitled "An Act to Codify, Revise and Amend the Laws Relating to the Judiciary" restraining the defendants as prayed in the bill of complaint and setting the hearing upon appellant's application for an interlocutory injunction for October 2nd, 1913. This hearing was later continued by stipulation of the parties and was had on November 17th, 1913, before the court convened under the provisions of said Section 266 of the Judicial Code. By the opinion of the court so convened (209 Fed. 604), (T. R. pp. 104-109), the application of the appellant was denied on the ground that the showing of the appellant as to the unreasonableness of the order of the Commission was not sufficient to prevent its enforcement pendente lite. The order denying the application of the appellant for an injunction pendente lite was entered on November 20, 1913, (T. R. p. 93).

From this order of the court denying the appellant's application for an interlocutory injunction, an appeal was taken directly to this court, under authority of Section 266 of the Judicial Code, Supra. The order of the lower court provides that the temporary restraining order theretofore granted be continued in force pending this appeal.

SPECIFICATION OF ERRORS.

The Court erred in denying appellant's application for an interlocutory injunction for the following reasons:

1. The appellant's bill of complaint and the affidavits filed in this cause showed sufficient ground for the granting of a temporary injunction.

2. Appellant's bill of complaint and affidavits filed in this cause showed that the order of the Arizona Corporation Commission, complained of in the bill of complaint, and sought to be enjoined, was unreasonable and not required by the needs of the people, and was in violation of the 14th Amendment to the Constitution of the United States by depriving the appellant of property without due process of law, and denying the appellant the equal protection of the law, and further showed that irreparable injury would result to the appellant by the denial of said injunction.

3. Appellant's bill of complaint and the affidavits filed in this cause showed that the appellant was making no return whatever upon the value of

its property, and the order of the Arizona Corporation Commission complained of and sought to be enjoined would prevent appellant from making a fair return, or any return whatever, upon the value of the property, and that said order was not within the power of the Corporation Commission of Arizona to make.

4. Appellant's bill of complaint and the affidavits filed in this cause showed grounds sufficient to require the granting of an injunction pendente lite; and further showed that the right to a final hearing would be denied appellant, and irreparable damage suffered by appellant by the refusal to grant such injunction pendente lite; and further showed that by granting said injunction pendente lite no injury would result to the appellees.

ARGUMENT.

The Lower Court Had Jurisdiction.

The jurisdiction of a Federal Court of Equity over the subject matter of this action will not, we believe, be questioned by the appellees. The order of the lower court, denying the application for a temporary injunction, was made, as is shown by the opinion and order of the court, (T. R. pp. 93, 104-109,) on the ground that a sufficient showing was not made to warrant its issuance. The jurisdiction of the United States District Court in this case is clear, for the reason that a Federal question is plainly presented by the bill of complaint. It is set forth that the order complained of unreasonably directed the appellant to make an ex-

penditure of thousands of dollars which was neither warranted by the needs of the people nor justified because of any inadequacy or insufficiency of service, (T. R. pp. 3, 4, 6.) That an order of the Arizona Corporation Commission which would thus compel the appellant, when adequate service was being provided, unnecessarily to expend a large sum of money, for which expenditure there was no public need, is contrary to the provisions of the 14th Amendment of the Constitution of the United States, which forbids a state to deprive any person of property without due process of law, will not, we believe, be seriously questioned.

> Washington ex rel. Oregon R. & N. Co. vs. Fairchild, 224 U. S. 510; 32 Sup. Ct. Rep. 535;
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> Atlantic Coast Line R. Co. vs. North Carolina Corp. Commission, 27 Sup. Ct. Rep. 585; 206 U. S. 1;
>
> Mo. Ry. Co. vs. State of Neb., 217 U. S. 196; 30 Sup. Ct. Rep. 461.

The bill of complaint further showed that the complainant was totally unable financially to comply with the order complained of; that it had been operating at a loss and was not making a fair return, or even any return on the value of its property, (T. R. pp. 6, 8); and that compliance with the order would make it impossible for the appellant to receive any return whatever on its property. That an order which prevents the making of a fair return is in violation of the 14th

Amendment has many times been held by this Court.

Smith vs. Ames, 169 U. S. 466;

Reagan vs. Farmers' L. & T. Co., 154 U. S. 362.

To the same effect is the case of Washington P. & C. Co. vs. Magruder et al, 198 Fed. 218.

The penalties prescribed for a violation of the order as set forth in the bill of complaint, (T. R. pp. 8-11,) likewise present a Federal question. Ex parte Young, 209 U. S. 123.

Nor can it be denied that a case was presented within the jurisdiction of a Federal Court of Equity.

Ex parte Young, 209 U. S. 123;

Washington ex rel Oregon R. & N. Co. vs. Fairchild, 224 U. S. 510;

Atlantic Coast Line vs. N. C. Corporation Commission, 206 U. S. 1;

Smyth vs. Ames, 169 U. S. 466;

Wilcox vs. Consolidated Gas Co., 212 U. S. 19;

A., T. & S. F. Ry. Co. vs. Love, 174 Fed. 59;

Love vs. A., T. & S. F. Ry. Co., 185 Fed. 321.

The Case Presented to the Lower Court Made Necessary the Issuance of an Interlocutory Injunction.

Having shown that the lower court had jurisdiction of this action, the single question now presented is whether the appellant's bill of complaint

and the affidavits filed by it, in view of the affidavits filed by the appellees, presented to the lower court sufficient grounds to require the issuance by it of the interlocutory injunction prayed for in the bill of complaint. For the reason that the other grounds stated in the specifications of error are necessarily but an elaboration of this one question and are so closely related, they do not, we believe, warrant a discussion under their separate divisions.

In taking an appeal to this court, we are not unaware of the rule which frequently has been stated, and which will doubtless be invoked by the appellees, namely, that the granting or refusal of an application for an interlocutory injunction is largely within the discretion of the trial court. While we recognize this rule, it is nevertheless true that there are well defined and established principles which must control the action of a lower court in passing upon an application of this nature, and that in view of the right of appeal expressly granted, where the order of the lower court constitutes a violation of these principles and an abuse of discretion, its ruling will not be sustained.

The cases are uniform in holding that in a case where the complaint states a good and sufficient cause of action, where the injury to the complainant will be great and irreparable in the event that the application for an interlocutory injunction is denied, and where there is a reasonable probability that the complainant will be successful on the final hearing of the cause, the application should-

be granted. We believe that in the case at bar the bill of complaint and the affidavits submitted, presented such a case to the lower court as to have required the issuance of the temporary injunction prayed for and that the denial thereof constituted such a violation of the foregoing fundamental principles, and consequently such an abuse of discretion, as to require a reversal of its decision.. In showing that the order of the lower court was erroneous, we shall discuss the showing made by the appellant in the court below as to (1) the irreparable damage which would be sustained by the appellant because of a denial of its application; (2) the lack of power under the Federal Constitution in the Arizona Corporation Commission to make the order complained of; (3) the lack of necessity and unreasonableness and, therefore, the unconstitutionality of the Commission's order by a consideration of the essential factors determining this question; and (4) the relative degree of injury to the respective parties which in view of the showing on the foregoing points required the issuance of the temporary order prayed for.

Irreparable Damage to the Appellant Was Certain to Result Because of a Denial of Its Application for an Interlocutory Injunction.

The appellant's bill of complaint and affidavits presented to the lower court a case of the attempted enforcement by the Arizona Corporation Commission of an order of an extreme and unusual character requiring the appellant to double track approximately a mile of its line on West

Washington Street in the City of Phoenix at an expense to the appellant of approximately Fourteen Thousand ($14,000.00) Dollars, and further sums in the event of paving and for maintenance. (T. R. pp. 3, 7, 25, 26, 27.) The bill of complaint sets forth the enormous penalties which are prescribed by the statutes of Arizona, (a portion of which are for convenience set forth in the Statement of Facts,) and which would be enforced in the event of non-compliance with this order. (T. R. pp. 7-11,) and it was apparent that unless an interlocutory injunction was granted, pending a final hearing on the merits of the case, the rights of the appellant would forever be concluded, and that a hearing of the merits of its cause would be forever denied. It was clearly set forth that should the temporary injunction be denied, the appellant would immediately be compelled either to expend its money in what its complaint and affidavits showed to be a needless outlay, or to suffer the enormous penalties prescribed for a non-compliance with the order. Surely in such a case, where the denial of an interlocutory injunction was certain to terminate any rights which the appellant might have and to cause it such irreparable loss, if the bill of complaint and affidavits presented a case in which there was any question of right for determination on final hearing the interlocutory injunction should have been granted and its denial was error.

In view of the great and irreparable loss which it was apparent must so surely follow the denial of the application of the appellant for an inter-

locutory injunction, if it reasonably appears from the appellant's bill of complaint and affidavits that this order was not within the power of the Arizona Corporation Commission to make, or was unreasonable or unnecessary and therefore in violation of the 14th Amendment of the Constitution of the United States, there can be no question as to the error of the court in refusing to grant a temporary writ.

The Order of the Arizona Corporation Commission Sought to Be Enjoined Was Without the Power of the Arizona Corporation Commission.

The order of the Arizona Corporation Commission requiring the appellant street car company to double track a line of its street railway is, so far as we have been able to find, without precedent, and goes, we contend, far beyond the limits of the Federal Constitution within which a State Commission must always act. As was said by this court in the case of Mo. P. R. Co. vs. Nebr., 217 U. S. 196:

> "It also is true that the states have power to modify and cut down property rights to a certain limited extent without compensation, for public purposes, as a necessary incident of government—the power commonly called the police power. But railroads, after all, are property protected by the Constitution, and there are Constitutional limits to what can be required of their owners under either the police power or any other ostensi-

ble justification for taking such property away."

It is submitted that an order of this unusual and drastic character, which would compel the investment of this large sum of money in building new track without compensation and with no possibility of return, was entirely without the power of the Arizona Corporation Commission to make, and violative of the Federal Constitution, and that its enforcement should consequently have been enjoined as prayed.

The Order of the Arizona Corporation Commission Was Shown to Be Unreasonable and Unnecessary and Therefore Violative of the 14th Amendment to the Constitution of the United States.

Regardless of the foregoing, however, by reason of the showing made as to the utter unreasonableness and lack of necessity of the order in question, the decision of the lower court refusing to enjoin the enforcement of the order pendente lite can, we believe, in no event be sustained.

In viewing the showing of the appellant as to the unreasonableness and lack of necessity of the order complained of, the controlling factors for consideration are the character of the community to be served, the amount of traffic over this line, the financial condition of the appellant, the advantage to be gained by the public in comparison with the expense to be sustained by the appellant, and the nature and extent of the service rendered and capable of being rendered by existing facilities. State of Washington ex rel Oregon R. & N.

Co. vs. Fairchild, 224 U. S. 510; Mo. P. R. Co. vs. Nebr. 217 U. S. 196. It is held in the cases above cited, and in numerous other cases of the Federal Courts, that an order of a State Commission or a State statute, which, from a consideration of the foregoing factors, is unreasonable and unnecessary, violates the Federal Constitution and cannot be enforced.

From the sworn bill of complaint and affidavits filed in this case, it clearly appears that the order directing this double trackage was unreasonable and was not justified by the needs of the people. The community through which this line runs is shown to be a very limited and sparsely settled district. (Bill T. R., pages 2, 3 and 6; affidavit of Gould, T. R. p. 28.) The population of the entire district served by this line, as shown by the above mentioned affidavit of Gould, as taken by a careful census, was shown to be only a little more than one thousand people, and this number is not materially increased in the counter-affidavit of Price, filed by the appellee (T. R. p. 66) when we consider that allowance is there made for inhabitants of vacant houses. It further appears in the affidavit of Gould (T. R. p. 28) that more than fifty automobiles were owned by the residents of this district, and that a large part of the district is in easy walking distance of the business section of the City of Phoenix. The maps submitted as an exhibit to the affidavit of Gould (T. R. p. 28) demonstrate how widely separated are the houses in this community and how little the community is built up. As will appear from an inspection of the proceedings at the hearing

before the Arizona Corporation Commission, which proceedings are attached to the affidavit of S. H. Mitchell (T. R. 40 to 62,) no competent evidence whatever was offered to prove that the character of the community served by the line in question in any manner warranted the order for this additional trackage. It was further clearly shown that this order was not warranted or justified by the amount of traffic on the West Washington Street line. The appellant's sworn bill of complaint and affidavits showed that the traffic was extremely light, that the cars were seldom half full and were never crowded, (T. R. p. 5 and affidavits of Gould, Mitchell, Snow, Allen, Showers, Hodges and Woolstenhulme, T. R. pp. 28, 30, 32, 33, 36, 38 and 63.) By accurate records kept during the months of May, August, September and October of the year 1913, and immediately preceding the denial of the appellant's application, the number of people riding on the cars at representative points on this line is proved to have been small, and an extremely low average is shown, the cars for the most part carrying only a few passengers. (Affidavit of Woolstenhulme, T. R. p. 63.) No substantial evidence was offered at the hearing before the Arizona Corporation Commission of an amount of traffic sufficient to justify the order made by that body. (T. R. pp. 41 to 62, inclusive,) nor is anything on this subject of extent of traffic except the most vague and indefinite statements contained in the affidavits submitted by the appellees (Affidavits of Werner, Vanderwater, Boyce, Hilderbrand, Bates and Ingles, T. R. pp. 68, 78, 80, 81, 83 and

90.) The affidavit of Mr. Geary (T. R. p. 74), Chairman of the Corporation Commission, admits that the traffic for the preceding five or six months had been very light, and the other statements contained in this affidavit are for the most part based upon conjecture and hearsay, and like the other affidavits submitted by the appellees, contains nothing definite or certain upon this question.

Not only did the complaint and affidavits present a strong showing that the order of the Corporation Commission was neither justified by the character of the community to be served nor by the amount of traffic, but a strong case was also presented of an adequate and efficient service rendered and capable of being rendered without the additional trackage ordered by the Commission. If the present facilities were sufficient for the public needs, or if an adequate and efficient service could be rendered without putting the appellant to a great and needless expense, there surely was no justification for this order. Mo. Pac. R. R. Co. vs. Nebraska 217 U. S. 196, 30 Sup. Ct. Rep. 461. The question of the sufficiency of the service of a public service corporation must always be determined by a consideration of the reasonable requirements of the community and the people to be served. A service required in a populous community where traffic is heavy would surely not be required in a community such as the one with which we are concerned, viz., a thinly settled and limited district, with a scattered population largely on the outskirts of a small town of

little more than fifteen thousand people (T. R. p. 40.) The bill of complaint and affidavits filed by the appellant establish that, considering the character of the community to be served, and the number of people using this line, a fifteen minute schedule afforded a reasonable and adequate service, and this is not controverted by the affidavits of the appellee. It is further shown by the most accurate proof which affidavits can afford that this fifteen minute schedule was being and had been promptly and efficiently maintained. (Bill T. R. pp. 2, 3 and 6; affidavits of Mitchell, pp. 30, 40; Newcomer, p. 21; Gould, p. 28; Woolstenhulme, p. 63; Showers, p. 26; Trent, p. 37; Hodges, p. 38; Snow, p. 32; Allen, p. 33.)

It is shown that the cars of the appellant left the terminals on almost precise schedule time, and that there was practically no variation from the regular fifteen minute interval between cars. These facts are established both by the affidavits of those experienced and in constant and close touch with conditions, and by accurate records kept for long periods of time, (T. R., pp. 30, 31, 63, 64,) the accuracy of which proof in comparison with the vague and indefinite statements contained in the appellee's affidavits is clear. Out of thousands of times that the cars of the appellant left the terminals of the Washington Street line and passed representative points along the West Washington Street line there were but few and inconsiderable delays, and such delays as there were, are shown to have been due to causes in no way connected with the question of double trackage. It is further shown by the bill of com-

plaint and by the foregoing affidavits that even in the event that a more frequent schedule were deemed reasonable and necessary, a more frequent schedule could easily be maintained with the present trackage without subjecting the appellant to the heavy burden which the order of the Commission requires.

The affidavits filed by the appellee (T. R., pp. 68, 70, 78, 80, 81 and 83) fail to show that the service of the appellant was inadequate for the community and the people to be served thereby. It is true that in the several affidavits filed, statements are made as to occasional cases of delay. No competent evidence, however, is given that the delays mentioned were caused by lack of a double track. None of the parties by whom these affidavits were made, appear to have had any experience in street railway operation, and even though occasional delays had occurred, this does not show insufficiency of service for the community served, and there is nothing offered to show that the delays were not due to other causes, which so far as possible to be remedied can be corrected without compelling the large expenditure called for by the Corporation Commission's order.

Without considering the questions of expense and of the financial inability of the appellant to comply with the order complained of, the showing of the appellant as to the unreasonableness and lack of necessity of this order was more than sufficient to establish such a probable right and injury to that right as to have required that it be granted a final hearing in order that its rights

might be fairly and fully determined. It was, however, further shown that the appellant was financially unable to comply with the order, that it was and had been operating at a loss, and making no return whatever upon its invested capital, and that the enforcement of the order would result in the confiscation of its property. By the bill and affidavits submitted, the operating expenses and operating revenues for the several years preceding the filing of the appellant's bill of complaint are stated and the operating expenses are shown to have exceeded the operating revenues (T. R., pp. 3, 4, 6, 7, 22, 23, 24, 30 and 31.) Even from the affidavit submitted by the appellees on this point, (T. R. 87) it is clear that the appellant company had been operating without any return as no allowance is made by the statement in that affidavit for depreciation of the company's property, (T. R., p. 39.) It is shown that the company has never been able to pay a dividend, nor to pay interest on its bonded indebtedness, (T. R. 22.) It is further shown that the construction of this double trackage would add greatly to the investment of the appellant, thus making greater the rate of loss and less the possibility of any return, while the maintenance of the line would also cause material additional expense without increasing the revenue. (T. R 4.) The company would, therefore, be compelled to use up its capital in complying with this order without the possibility of any gain. This, of itself, made it the duty of the court to restrain the enforcement of this order pendente lite.

In a similar case, viz., Washington P. & C. Ry.

Co. vs. Magruder, 198 Fed. 218, 231, it was held as follows:

> "Neither under the exercise of the police power or any other ostensible justification can the property of a corporation be taken from it without compensation. Mo. Pac. Ry. Co. vs. Nebr. 217 U. S. 206, 30 Sup. Ct. Rep. 461, 54 L. Ed. 727, 18 Ann. Cases, 989.
>
> "It is true that the legislature has the right to require that a public service corporation shall furnish a needed and reasonable facility in spite of the fact that the furnishing of such facility will cost the corporation more than it will bring it. Mo. Pac. Ry. Co. vs. Kansas, cited supra; Atl. Coast Line Ry. Co. vs. No. Carolina Cor. Comm., 206 U. S. 1, 27 Sup. Ct. 585.
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> "In each of the above cases, however, the corporation concerned operated a great system of railroads. In neither did it claim that, if the increased accommodation was furnished, its total gross income from all sources would be less than its necessary expenses of operation and maintenance, without making any return whatever upon the capital invested. Such is complainant's claim. The evidence sustains it. To hold that the legislature may not by penal sanctions compel a corporation to use up its capital in the public service is not to restrict any exercise of legislative power which can in the end be effective. In the long run all attempts to secure for the public so costly a facility must prove futile, no matter what the courts do or leave

undone. If the facility cannot be furnished otherwise than by the expenditure of the capital invested, sooner or later the exhaustion of the corporation's capital will make it impossible for the corporation to render any service whatsoever."

In the case at bar, as in the case cited, it was shown that the total income of the appellant from all sources had been and would be less than the necessary expenses of operation and maintenance and that no return had been or could be made on the company's property, and that the appellant was without funds and totally unable to make the expenditure necessitated by the order of the Commission (T. R. 22, 23.) On this showing alone, it is submitted that the denial of the appellant's application for an interlocutory injunction was error.

In view of the showing made by the appellant as to the unreasonableness and lack of necessity of the order complained of, we submit that the application for this interlocutory injunction was wrongfully denied. There was clearly such a showing of right on the part of the appellant as to have required the issuance of the temporary writ.

In View of the Relative Degree of Injury to the Respective Parties by the Granting or Refusal of the Interlocutory Injunction Prayed For, the Showing of the Appellant Presented to the Lower Court Required the Issuance of Injunction Pendente Lite.

When we further consider that the cur-

cumstances of this case were such as to make a denial of the appellant's application, result in denying it a final hearing and in entirely and forever concluding and destroying the rights claimed by it, and that the granting thereof would not injure the appellees, there can, we believe, be no question as to the error of the lower court. By reason of the extreme and severe penalties prescribed for a failure to comply with the orders of the Arizona Corporation Commission (T. R. pp. 8-11,) the refusal of the court to issue an interlocutory injunction operated at once to deprive the appellant of a final hearing. In the case of Washington P. & C. Ry. Co. vs. Maguder, 198 Fed. 218, 232, the imposition of such penalties of itself was held sufficient to necessitate the granting of the injunction, the court saying:

> "The act moreover is open to further fatal objection. As did the statute declared invalid in Ex parte Young, it, in effect, seeks to deny to complainant all opportunity for judicial review of the reasonableness of its provisions. Complainant promptly sought the interposition of this court * * Whatever the cause of delay, the fact remains that if the act be valid, and if the injunction be dissolved, the complainant is liable to penalties which by this time will aggregate quite $30,000 or about one-third of what the evidence indicates complainant's road is worth."

That great and irreparable injury must necessarily result to the appellant by the denial of an interlocutory injunction was apparent. Upon the denial of the appellant's application it would,

save for its appeal to this court, immediately have been subjected to these enormous penalties with no possible opportunity for a hearing of its cause. Unless the enforcement of the order were temporarily enjoined, a final hearing would clearly be too late to save the appellant from irreparable loss.

On the other hand the granting of the interlocutory injunction prayed for would in no way have effected or disturbed the rights of the appellees. The maintaining temporarily of the case in statu quo pending a final hearing could not possibly have resulted to their detriment or injury. The rule is well established that where, as in the case at bar, there are reasonably disputable questions of law or fact for judicial determination, and where great and irreparable loss and injury will result to the complainant if the preliminary injunction is denied, and little or no injury can result to the defendant if the injunction is granted, it is the duty of the court to preserve the status quo pending a final hearing of the cause. Because of the violation of its duty in this respect, as laid down by numerous decisions of the Federal courts, it is submitted that the order of the lower court cannot be sustained.

In an application for an interlocutory injunction which is heard only no the bill of complaint and affidavits, it is necessarily impossible to present satisfactorily all the matters which will be presented at the final hearing of the cause, and in a case involving the questions presented in the case at bar, it is impossible for a court on an application of this nature fully and satisfactorily to

decide the merits of the controversy. The lower court, however, as appears from its opinion, (T. R. pp. 104-109), in disregard of the showing made by the appellant and upon the several affidavits filed by the appellees, treated the case as though it were before it on final hearing and, without giving the appellant an opportunity to have its case fully heard, rendered a decision on the merits of the case, which would terminate the appellant's rights.

We desire to refer to a few of the many cases in which are enumerated the principles which should have controlled the action of the lower court, but which were clearly violated by its decision.

In New Memphis Gas & Light Co. vs. City of Memphis, 72 Fed. 952,953, the court set forth in the following language the principles to be followed in determining whether a temporary injunction should issue:

> "It is to be borne in mind that it is not proper, on an application of this kind, to decide or to consider with a view to final decision, the merits of the controversy, especially where such merits turn on grave questions of law. It would be no more proper to do so on a motion for an injunction than on a motion to dissolve an injunction. It is consequently settled that upon a preliminary application for injunction, all that the judge should, as a general rule, require, is a case of probable right and probable danger to that right without the interposition of the court, and his discretion should then be

regulated by the balance of inconvenience of injury to one party or the other."

Similar principles are stated in the case of Sanitary Reduction Works of San Francisco vs. Cala. Reduction Company, et al, 94 Fed. 693, 696, 697, as follows:

"The argument of counsel has followed the wide range of the affirmative defenses set forth in the respondent's answer. To determine these defenses now would in effect dispose of the case upon its merits,—a result not contemplated by the rules governing courts of equity in granting preliminary injunctions. The order for such injunction does not finally determine the rights of the parties to the action, and its only purpose and effect are to preserve the existing state of things until the case has been fully heard by the court and the entry of a final decree therein; and it is equally well settled that the granting of a provisional injunction rests in the sound discretion of the trial court, and it is not necessary that the court should, before granting it, be satisfied from the evidence before it that the plaintiff will certainly prevail upon the final hearing of the cause. On the contrary, to adopt the language of the court in Ga. vs. Brailsford, 2 Dall. 402, 'A probable right and a probable danger that such right will be defeated without the special interposition of the court is all that need be shown as a basis for such an order."

The following extract from the opinion of the court in Carpenter, et al, vs. Knowllwood Cemetery, et al., 188 Fed. 856-857, is also applicable

> "An interlocutory injunction is merely provisional in its nature and does not conclude any right. Its object and effect are merely to preserve the property in statu quo until hearing on the merits. The first question to be determined is whether the case shows whether there is a substantial question between the parties. If the court is satisfied that there is not a substantial question to be tried, no injunction will issue, and on the other hand, if there appears that there is a substantial question in the case, then the court will address itself to the second question, namely the relative degree of injury which will be caused by the preservation of the property in statu quo until final hearing. If it appears that by granting this relief the injury to the respondents will be serious and the injury to the complainants slight the injunction will be refused. If, however, it appears that the injury to the complainants will be serious and the injury to the respondents comparatively slight, the injunction will be granted. (Citing Kerr on Injunctions, Second Edition, pages 1216-17, High on Injunctions, Fourth Edition, paragraphs 4, 5, 13)."

Equally strong is the language of the court in the case of Chicago and N. W. Railway Company vs. Railway Commission 35, Fed. 866, 881:

> "Other affidavits are filed showing the amount of dividend heretofore paid and the difference between the schedule of the commissioners and those heretofore enforced. Of course, I know that affidavits are unsatisfactory testimony and that it would be the height of folly to say that this testimony clearly shows that such would be the effect of this schedule, but this is an application only for a preliminary injunction and upon such application probabilities are to be considered and the injuries which result to either of the parties by the granting or refusing of the injunction."

In Irving vs. Joint District Council U. B. of Carpenters, etc., 180 Fed. 896, 900 in referring to the nature of the showing necessary to warrant the issuance of a preliminary injunction the court said:

> "Without meeting these instances of interferences catagorically the defendants object that they are stated upon hearsay and lack precision. No doubt more and better evidence would be required on final hearing, but all that is needed upon a motion for preliminary injunction is to satisfy that a cause of action exists and that irreparable injury will be done complainants unless they are protected. In such a case a preliminary injunction ought to issue."

The case of Harriman vs. Northern Security Company, 132 Fed. 464, 475 to 477, and Wil-

mington City Railway Company vs. Taylor, 198 Fed. 159, 197, 198, enunciate the well settled principles of the courts concerning this question in almost identical language. We quote from the latter opinion:

> "On the question of the circumstances determinative of the propriety of granting or withholding preliminary injunctions there are certain well settled principles. The granting or refusal of a preliminary injunction, whether mandatory or preventive, calls for the exercise of a sound judicial discretion in view of all the circumstances of the particular case. Regard should be had to the nature of the controversy, the object for which the injunction is sought, and the comparative hardship or convenience to the respective parties involved in the awarding or denial of the injunction. The legitimate object of a preliminary injunction, preventive in its nature, is the preservation of the property or rights in controversy until the decision of the case on a full and final hearing upon the merits, or the dismissal of the bill for want of jurisdiction or other sufficient cause. The injunction is merely provisional. It does not, in a legal sense, finally conclude the rights of parties, whatever may be its practical operation under exceptional circumstances. In a doubtful case, where the granting of the injunction would, on the assumption that the defendant ultimately will prevail, cause greater detriment to him than

would, on the contrary assumption, be suffered by the complainant, through its refusal, the injunction usually should be denied. But where, in a doubtful case, the denial of the injunction would, on the assumption that the complainant ultimately will prevail, result in greater detriment to him than would, on the contrary assumption be sustained by the defendant through its allowance, the injunction usually should be granted. The balance of convenience or hardship ordinarily is a factor of controlling importance in cases of substantial doubt existing at the time of granting or refusing the preliminary injunction. Such doubt may relate either to the facts or to the law of the case, or to both. It may equally attach to or widely vary in degree as between the showing of the complainant and that of the defendant, without necessarily being determinative of the propriety of allowing or denying the injunction. Where, for instance, the effect of the injunction would be disastrous to an established and legitimate business through its destruction or interruption in whole or in part strong and convincing proof of right on the part of the complainant and of the urgency of his case is necessary to justify an exercise of the injunctive power. Where, however, the sole object for which an injunction is sought, is the protection of property or legitimate business, or the maintenance of the status quo, until the question of right between the parties can be decided on final

hearing, the injunction properly may be allowed, even though there be serious doubt of the ultimate success of the complainant. There is abundant authority in support of these views (citing numerous cases.) The application of these principles to the case in hand not only justifies but requires the awarding of a preliminary injunction. The only evidence before the court, aside from the bill and its exhibits, consists of exparte affidavits, which are inconclusive and to a certain extent conflicting on material points. The evidence, such as it is, preponderates on the side of the complainants. But the case is not ripe for final decision and to render one now would be both premature and improper. A final decision should be reached only after a thorough, orderly and rigid investigation of the facts, in connection with the law, so conducted as to allow the application of the usual and most satisfactory test of truth, namely, the examination, cross examination and re-examination of witnesses, and also the production of books, papers and accounts. Further, the 'balance of convenience or hardship' here operates in favor of the complainants."

In San Joaquin & Kings R. C. & I. Company vs. Stanislaus County, 163 Fed. 567-574, in determining whether or not a temporary injunction should issue the court, said:

"The question now before the court is whether, upon the showing made, the com-

plainant has made out a sufficient case to entitle it to an injunction to preserve the status quo until the case can be heard upon the merits, and in reaching a conclusion upon that question the court must consider the case as a whole. The argument upon the hearing took a wide range, touching questions that can only be determined upon the final hearing.

"Whether complainant is entitled to an injunction pending litigation is comparatively a narrow question. In Glascott vs. Lang, 3 Myl. & C. 451, 455, Lord Chancellor Cottenham said: 'In looking through the pleadings and the evidence, for the purpose of an injunction, it is not necessary that the court should find a case which would entitle the plaintiff to relief at all events. It is quite sufficient if the court finds, upon the pleadings and upon the evidence, a case which makes the transaction a proper subject of investigation in a court of equity." In Hadden vs. Dooley, 74 Fed. 429, 431, 20 C. C. A. 494, Judge Shipman in the Circuit Court of Appeals for the Second Circuit, said:

" 'When the questions which naturally arise upon the transactions made them a proper subject for deliberate examination, if a stay of proceedings will not result in too great injury to the defendants, it is proper 'to preserve the existing state of things until the rights of the parties can be fairly and fully investigated and determined by evi-

dence and proofs which have the merit of accuracy'.'"

Numberless cases to the same effect could be cited. Among them we beg to call attention to the following: Russell vs. Farley, 135 U. S. 433, 438; City of Newton vs. Lewis, 79 Fed. 715; San Francisco Gas and Electric Company vs. City and County of San Francisco, 164 Fed. 884, 892-893; Seaboard Air Line Railway Company vs. Railroad Commissioners, 155 Fed. 792, 808; Pacific Telephone & Telegraph Company vs. City of Los Angeles, 192 Fed. 109; Ex parte Young, 209 U. S. 123, 28 S. C. 441; Denver and R. G. R. Company, et al., vs. United States, 124 Fed. 156, 161.

Applying the principles established by the foregoing cases, it is evident that the case presented to the lower court was such as to have necessitated the issuance by it of an interlocutory injunction and that its denial of the appellant's application was such a violation and disregard of the rules of law which it should have followed as to require a reversal of its decision. In every respect, the case at bar presents a case even stronger than the cases cited. The bill of complaint and affidavits established the strongest case of a right in the appellant requiring protection, and which should have been preserved, pending a final hearing, and it was certain that great and irreparable injury must result to the appellant if the interlocutory injunction were denied and that by the granting of the interlocutory injunction the appellees could suffer no injury.

It is, therefore, submitted that the order of the District Court should be reversed and said court be instructed to enter the temporary order prayed for in the bill of complaint and to grant such other or further relief as to this Court may seem fit.

Respectfully submitted,
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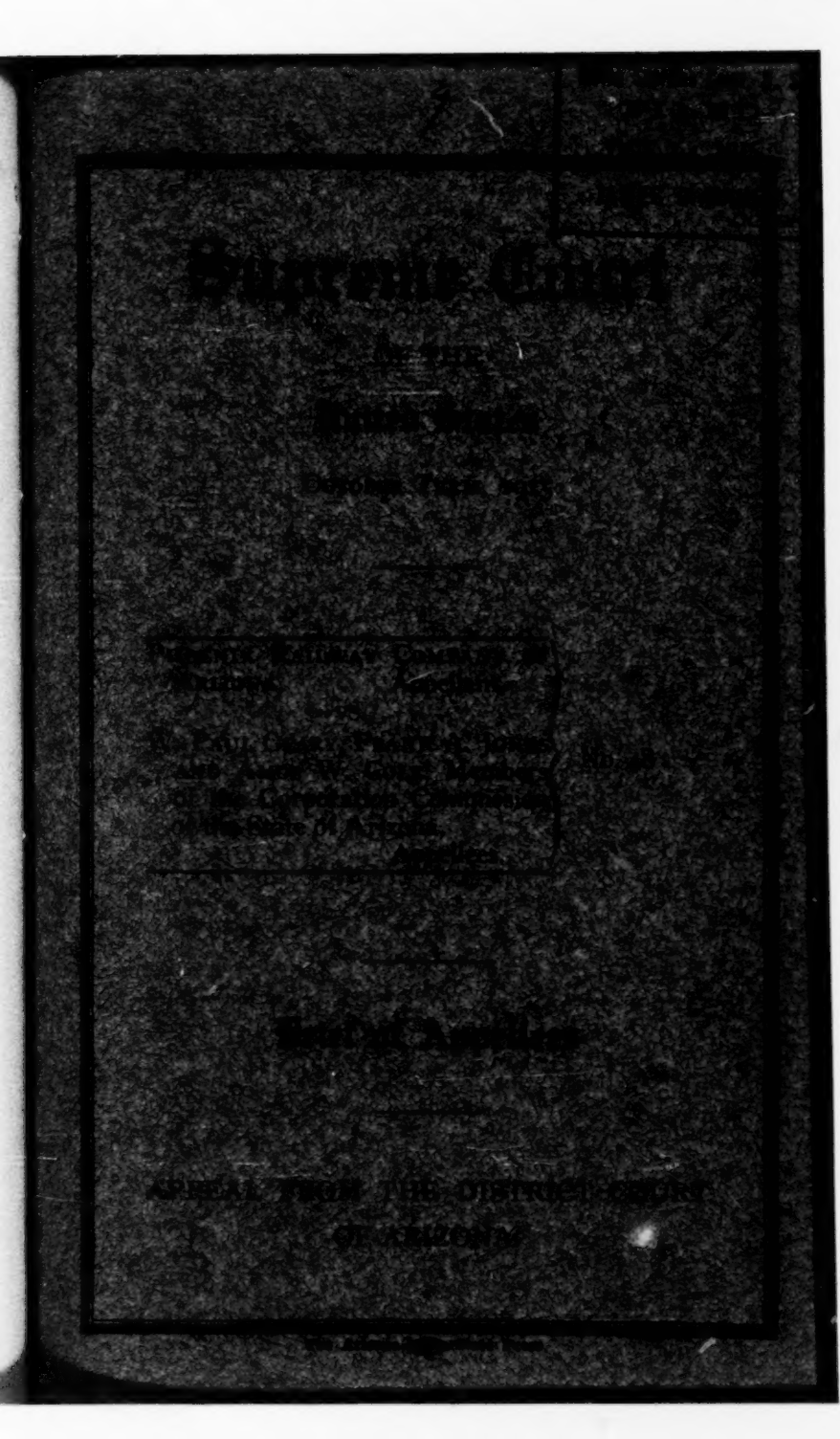

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Supreme Court of the United States

OCTOBER TERM, 1915

No. 48

PHOENIX RAILWAY COMPANY OF ARIZONA, Appellant,
vs.
W. PAUL GEARY, FRANK A. JONES AND AMOS W. COLE, Members of the Corporation Commission of the State of Arizona, Appellees.

STATEMENT OF THE CASE.

The Statement of the Case, set forth in appellant's brief, quite clearly discloses the facts involved in this cause, which may be generally summarized by stating that this appeal involves an order of the District Court of Arizona (convened under Sect. 266 of the Judicial Code, Act of March 3, 1911, Chapt. 231; 36 Stat. 1162 U. S. Comp. Stat. Supp. 1911, p. 236), denying appellant's application for a temporary injunction to restrain the operation of an order of the Corporation Commission of Arizona, requiring the appellant to construct a double track line of street railway on West Washington Street, in the City of Phoenix, Arizona, from the intersection of Seventh Avenue with that street to Seventeenth Avenue. By the opinion of the District Court, so convened, it was determined that appellant's bill of complaint, together with the affi-

davits in support thereof, were insufficient to justify the granting of a temporary injunction (209 Fed. 694). From the order of the District Court, so convened, denying appellant's application for a temporary injunction, an appeal was taken directly to this Court, but in the meanwhile the temporary restraining order, which had theretofore been granted, was continued in force pending this appeal (209 Fed. 699).

ARGUMENT.

The discussions advanced by appellant, in support of its appeal, we think may be narrowed to the propositions that (1) the lower court abused its discretion in refusing to grant the application for a temporary injunction, and (2) the order of the Arizona Corporation Commission complained of was so unreasonable and arbitrary as to deprive appellant of its property without due process of law, in violation of the Fourteenth Amendment of the Federal Constitution. Before discussing these propositions, we desire to call the attention of the Court to the fact that, while the lower court refused to grant appellant's application for an interlocutory injunction, it nevertheless, because of the heavy penalties imposed by statute for a failure to comply with the orders of the Arizona Corporation Commission, retained jurisdiction so that no injustice would be done the appellant while complying with the order (209 Fed. 697). In view of this, the severity of the penalties of the statute for a failure to comply

with the order of the Arizona Corporation Commission was not invoked by the appellant, other than to establish the jurisdiction of the lower court.

The granting or refusing of an injunction lies within the discretion of the court, and should not be exercised except in clear case. *Knoxville vs. Knoxville Water Co., 212 U. S. 1; Ex parte Young, 129 U. S. 123.* Unless, therefore, it can be determined by this Court that the exercise of the power of the Arizona Corporation Commission, now complained of, was so arbitrary and unreasonable as to deny the appellant due process of law, the discretion of the lower court in refusing to grant an interlocutory injunction should not be disturbed.

It has been settled that because the power exists to regulate public utilities, there is no corresponding power to exercise an unreasonable regulation. *Atl. Coastline R. R. Co. vs. North Carolina R. R. Corporation Commission, 206 U. S. 1, and authorities there cited.* With this rule in view, it is necessary to inquire if the order of the Corporation Commission, now complained of, was an unreasonable and arbitrary exercise of the power of that Commission. The bill of complaint and the affidavits disclose that, at the time the order of the Arizona Corporation Commission was promulgated, complainant's property was assessed for taxation at Two Hundred Fifty Thousand ($250,000.00) Dollars, which appellant states to be a low valuation. Upon that valuation the order now complained of required an expenditure of approximately Fourteen Thous-

and ($14,000.00) Dollars. The lower court concluded that an order requiring this amount of expenditure did not appear, from the bill of complaint and the affidavits in support thereof, to be arbitrary and unreasonable. The necessity of the order is apparent, for the reason that complainant's line of railway which was required to be double tracked, not only served a growing district of the City of Phoenix, wherein resided approximately one thousand five hundred ninety-five persons over the age of six years (Affidavit of C. R. Price, p. 66 T. R. and affidavit of J. P. Gould, p. 28 T. R.), but in conjunction served the Carnegie Public Library (Affidavit of Addie P. Ingalls, p. 90 T. R.) and the State Capitol, where are situate all the state governmental offices.

It readily appears to us that a public utility which holds its franchise from one of the municipalities of the state, is not burdened by being compelled to make an expenditure of approximately $14,000.00 upon a taxable valuation of $250,000.00, when it has been determined that such an expenditure is necessary to facilitate the comforts and needs of the people whom it serves.

The bill of complaint alleged that the complainant operated its line of street railway from the period beginning July 1, 1911, and ending July 1, 1912, at a loss of Four Thousand Eight Hundred Ninety-one Dollars and Sixteen Cents ($4,891.16), and for the similar period ending July 1, 1913, at a gain of Two Thousand Three Hundred Twenty-five Dollars and Three Cents ($2,325.03), making a total deficit for the entire

period of Two Thousand Five Hundred Sixty-six Dollars and Thirteen Cents ($2,566.13) (P. 6 T. R.). This allegation was evidently based upon the affidavit of C. E. Newcomber, which was attached to the bill of complaint (p. 22 T. R.). The counter affidavit of W. N. Sangster (p. 87 T. R.), Auditor of the Arizona Corporation Commission, discloses that the complainant operated its line of street railway for the same period at an earning of Eleven Thousand Six Hundred Seventy-eight Dollars and Twenty-three Cents ($11,678.23). Such divergent audits evidently prompted the lower court to conclude that there was an insufficient showing to grant the application for a temporary injunction.

It has been the policy of this Court, in causes which involve the regulation of public utilities by legislative and administrative bodies, not to interfere with their actions, unless there was an unreasonable and arbitrary regulation. This rule was announced by this Court in the case of *San Diego Land & Town Co. vs. National City*, 174 *U. S.* 739-754, as follows:

> "Judicial interference should never occur unless the case presents, clearly and beyond all doubt, such a flagrant attack upon the rights of property, under the guise of regulations, as to compel the Court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for the public use."

Again in the case of the *San Diego Land & Town Co. vs. Jasper*, 189 *U. S.* 439, which involved a water rate prescribed by the Board of

Supervisors of San Diego County, California, this Court said:

> "In a case like this we do not feel bound re re-examine and weigh all the evidence, although we have done so, or to proceed according to our independent opinion as to what were proper rates. It is enough if we can not say that it was impossible for a fair-minded board to come to the result which was reached."

While the two cases immediately quoted from involved regulations of rates of a public utility, we perceive that there is no distinction, insofar as the proposition therein announced is applicable, between such a regulation and one which affects the equipment of a public utility. In the case of *Atlantic Coast-Line R. R. Co. vs. North Carolina Railroad Corporation Commission, supra*, in distinguishing the difference between the exercise of legislative powers to establish rates, and an order compelling the corporation to render a service which was essentially its duty to perform, this Court said:

> "This is so because, as the primal duty of a carrier is to furnish adequate facilities to the public, that duty may well be compelled, although by doing so, as an incident, some pecuniary loss from rendering such service may result. It follows, therefore, that the more incurring of a loss from the performance of such a duty does not, in and of itself, necessarily give rise to the conclusion of unreasonableness, as would be the case where the whole scheme of rates was un-

reasonable under the doctrine of *Smyth v. Ames*, 169 *U. S.* 526, 42 *L. ed.* 842, 18 *Sup. Ct. Rep.* 418.

"Of course, the fact that the furnishing of a necessary facility ordered may occasion an incidental pecuniary loss is an important criteria to be taken into view in determining the reasonableness of the order, but it is not the only one. As the duty to furnish necessary facilities is coterminous with the powers of the corporation, the obligation to discharge that duty must be considered in connection with the nature and productiveness of the corporate business as a whole, the character of the services required, and the public need for its performance."

It will be observed by the Court that the order of the Arizona Corporation Commission complained of, did not require the appellant to extend its line of street railway into a new district, but only provided a double tracking of its line of street railway in a district already served. The reason for promulgating this order grew out of the inadequacy of service then rendered by appellant in that district. The line of appellant's property is already of double track construction on Washington Street to Seventh Avenue. The Arizona Corporation Commission, after a full and complete hearing, had the power to compel the appellant to double track its line, as by the order provided, in order to adequately serve the public. The lower court concluded, and we think rightly, that the order of the Arizona Corporation Commission, which entailed an expenditure admitted

by appellant of approximately $14,000.00, was justifiable because of the obligation of the appellant to adequately serve its patrons in a growing city like Phoenix, and especially in a district of that city wherein the Capitol of the State is located.

In the case of *Buffington vs. Harvey*, 95 *U. S.* 99, this Court held that the granting or the dissolution of a temporary injunction affords no ground of appeal. However, Section 266 of the Judicial Code has authorized an appeal directly to this Court, from an order granting or refusing an interlocutory injunction in the particular cases designated by that section of the Judicial Code, so we apprehend that the case of *Buffington vs. Harvey, supra*, would not, in view of that section of the Judicial Code, exclude this Court from reviewing the discretion exercised by the lower Court in refusing the temporary injunction in the instant case. That case is still authority for the proposition, however, that an interlocutory injunction is an extraordinary remedy, which will only be granted in the clearest cases.

CONCLUSION.

The appellant occupies the streets of the City of Phoenix by the right of franchise. This privilege is tantamount to a licensed monopoly, and as long as it continues there is an obligation to adequately furnish, for the convenience of the public, facilities which will insure safety and convenience. The Arizona Corporation Commission,

after notice and hearing, was of the opinion that the appellant should double track its line from the intersection of Seventh Avenue with Washington Street to Seventeenth Avenue, because of the public need. In view of the fact that a duty is enjoined upon the appellant to adequately serve the public, we contend that the bill of complaint and affidavits in support thereof, when considered in conjunction with the testimony taken before the Arizona Corporation Commission, its order, and the counter-affidavits filed by the appellees, that there is no such showing as will justify this Court in saying that the order of the Arizona Corporation Commission is arbitrary and unreasonable.

For all of which reasons it is respectfully submitted that the order of the District Court, denying appellant's application for a temporary injunction, should be affirmed.

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LESLIE C. HARDY,
GEORGE W. HARBEN,
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EDWARD M. CLEARY, of counsel,
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PHOENIX RAILWAY COMPANY *v.* GEARY ET AL., CORPORATION COMMISSION OF ARIZONA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA.

No. 48. Submitted October 29, 1915.—Decided November 29, 1915.

The Federal court has jurisdiction of a suit by a railway company against members of a state railroad commission to enjoin the enforcement of an order made by them which deprives the railway company of its property without due process of law.

A temporary injunction should not be granted under § 266, Jud. Code, in a suit to enjoin the enforcement of an order of a state railroad commission unless the bill of complaint and supporting affidavits, taken in view of the rebutting affidavits filed by defendant, make a clear case of unreasonable, arbitrary or confiscatory action on the part of the commission.

The presumption of reasonableness, existing in favor of action of a governmental agency, not having been overcome by the showing made upon the application therefor, the court below rightly denied the interlocutory injunction in this case.

Where, as is the case with the articles of the constitution and laws of Arizona relating to public utility corporations, the penalty provisions are clearly separable from the order of the commission and the constitutional and statutory authority therefor, this court will not, in advance of an attempt to enforce the penalties, determine whether such penalties are so excessive and severe as to amount to denial of due process of law in violation of the Fourteenth Amendment.

In this case an order denying an interlocutory injunction to restrain an order of the corporation commission of Arizona requiring a railroad company to double track a portion of its line is affirmed without prejudice to the court below dealing with the question of penalties.

THE facts, which involve the constitutionality under the Fourteenth Amendment of certain provisions of the

statute of Arizona creating the Corporation Commission of that State and of an order made by such Commission, are stated in the opinion.

Mr. Louis H. Chalmers, Mr. Edward Kent, Mr. Floyd M. Stahl, Mr. Alexander Britton, Mr. Evans Browne and *Mr. F. W. Clements* for appellant:

The lower court had jurisdiction.

The case presented to the lower court made necessary the issuance of an interlocutory injunction.

Irreparable damage to the appellant was certain to result because of a denial of its application for an interlocutory injunction.

The order of the Arizona Corporation Commission sought to be enjoined was beyond the power of the Commission.

The order of the Arizona Corporation Commission was shown to be unreasonable and unnecessary and therefore violative of the Fourteenth Amendment to the Constitution of the United States.

In view of the relative degree of injury to the respective parties by the granting or refusal of the interlocutory injunction prayed for, the showing of the appellant presented to the lower court required the issuance of the injunction *pendente lite*.

In support of these contentions, see *Atch., Top. & S. F. Ry.* v. *Love*, 174 Fed. Rep. 59; *Atlantic Coast Line* v. *Nor. Car. Corporation*, 206 U. S. 1; *Carpenter* v. *Knowlwood Cemetery*, 188 Fed. Rep. 856, 857; *Chicago & N. W. Ry.* v. *Railway Commission*, 35 Fed. Rep. 866; *Newton* v. *Lewis*, 79 Fed. Rep. 715; *Denver & R. G. Ry.* v. *United States*, 124 Fed. Rep. 156; *Harriman* v. *Northern Security Co.*, 132 Fed. Rep. 464; *Irving* v. *Joint District Council*, 108 Fed. Rep. 896; *Love* v. *Atch., Top. & S. F. Ry.*, 185 Fed. Rep. 321; *Mo. Pac. Ry.* v. *Nebraska*, 217 U. S. 196; *New Memphis Gas Co.* v. *Memphis*, 72 Fed. Rep. 952;

Pacific Tel. Co. v. *Los Angeles*, 192 Fed. Rep. 109; *Reagan* v. *Farmers' L. & T. Co.*, 154 U. S. 362; *Russell* v. *Farley*, 135 U. S. 433; *San Fran. Gas Co.* v. *San Francisco*, 164 Fed. Rep. 884; *Sanitary Reduction Works* v. *California Reduction Co.*, 94 Fed. Rep. 693; *San Joaquin Co.* v. *Stanislaus Co.*, 163 Fed. Rep. 567; *Seaboard Air Line* v. *Railroad Commissions*, 155 Fed. Rep. 792; *Smyth* v. *Ames*, 169 U. S. 466; *Oregon R. & N. Co.* v. *Fairchild*, 224 U. S. 510; *Washington P. & C. Co.* v. *Magruder*, 198 Fed. Rep. 218; *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19; *Wilmington City Ry.* v. *Taylor*, 198 Fed. Rep. 159; *Ex parte Young*, 209 U. S. 123.

Mr. Wiley E. Jones, Attorney General of the State of Arizona, *Mr. Leslie C. Hardy*, *Mr. George W. Harben* and *Mr. Edward M. Cleary* for appellees.

Mr. Justice Pitney delivered the opinion of the court.

In June, 1913, the Corporation Commission of the State of Arizona made an order directing appellant to double-track its line of street railway on West Washington Street in the City of Phoenix, in that State, between Seventh and Seventeenth Avenues, a distance of ten blocks; the work to be commenced within 30 days from the date of the order and completed on or before September 1. By a subsequent order the time for completion was extended until December 1, 1913. Having unsuccessfully applied to the Commission for a rehearing, appellant filed its present bill of complaint in the United States District Court, praying that the Commission's order be declared null and void as in contravention of the Constitution of the United States, and that the defendants (who include the members of the Corporation Commission, the Attorney General of the State, and the County Attorney), be enjoined from enforcing or attempting to enforce it by

suit, prosecution, or other proceeding, and from instituting any proceeding for the recovery of fines or penalties for any violation of or refusal to obey it; the ground of complaint being that the order was unjust and unreasonable because the service already rendered upon Washington Street by appellant was adequate and efficient; that the construction of a double track was not required by the needs of the public; that appellant's operating expenses exceeded its revenues, and that it was unable to make the additional expenditure of about $14,000 required for the double-tracking; and that compliance with the order would prevent appellant from making an adequate return, or any return at all, upon the value of its property. The bill further set up that under the constitution and statutes of Arizona complainant was required, under severe penalties, to put the order into effect, and to keep it in effect until modified or abrogated, and that while a right to review the reasonableness and lawfulness of the order in a state court was given by statute, the court was prohibited from issuing any injunction or restraining order until after the final determination of the matter, and in the meantime the order would be in full force and effect and must be obeyed, under heavy penalties for each day's continuance of the violation; and it was alleged that these statutory and constitutional provisions were adopted for the purpose of compelling acquiescence in any order made by the Corporation Commission and preventing a resort to the courts to test the reasonableness, justness, and validity thereof, and thus had the effect of depriving complainant of its property without due process of law and denying to it the equal protection of the laws, in violation of the Fourteenth Amendment.

Upon the filing of the bill, with accompanying affidavits, a temporary restraining order was granted, and a hearing of the application for interlocutory injunction was thereafter had before three judges under the provisions of

§ 266, Jud. Code, Act of March 3, 1911, c. 231, 36 Stat. 1087, 1162. The court held (209 Fed. Rep. 694) that complainant's showing as to the alleged unreasonableness of the Commission's order was not sufficiently strong to warrant an injunction to restrain its enforcement *pendente lite*, but the temporary restraining order was continued in force pending the present appeal, taken direct to this court under the cited section of the code.

The jurisdiction of a Federal court of equity over the subject-matter is of course well settled. *Ex parte Young*, 209 U. S. 123, 144; *The Minnesota Rate Cases*, 230 U. S. 352, 380; *Siler* v. *Louisville & Nashville R. R. Co.*, 213 U. S. 175, 190; *Louis. & Nash. R. R. Co.* v. *Garrett*, 231 U. S. 298, 303.

The sole question raised is whether the bill of complaint and supporting affidavits, in view of the rebutting affidavits filed by the appellees, made so clear a case of unreasonable, arbitrary, or confiscatory action on the part of the Corporation Commission as to call for an interlocutory injunction. The attempt was to show that there was no reasonable necessity for the Commission's order, in view of the character of the community to be served, the amount of traffic over the line, the financial condition of complainant, the nature and extent of the service already rendered and capable of being rendered with the existing facilities, and the advantage to accrue to the public as compared with the expenditures to be sustained by complainant in complying with the order. But the facts and the inferences were much in dispute. Complainant is not required to open up new territory, but only to give better service upon a street already occupied by it under a public franchise. Its line of railway on Washington Street is already double-tracked for a distance of 14 blocks in the business section of the city. The 10 blocks now required to be double-tracked lie between the business section and the state Capitol, where are

located the offices of the governor, the assembly chambers of the state legislature, the court room of the supreme court of the State and the chambers of the judges, the law library of the State, and the offices of the secretary of state, the attorney general, the corporation commission, and other state officials. On the line is located a public library and a park, both much frequented, while in the vicinity of the state Capitol there is an estimated population of from 1,200 to 1,500, the city as a whole having an estimated population of 25,000. There is abundant evidence of substantial inconvenience to the public owing to the fact that there is but a single track with one turnout between Seventh and Seventeenth Avenues, and some evidence tending to create an inference that the revenues of the company would be materially increased by the double-tracking. The Commission's order appears to have been made after full hearing and investigation respecting these matters. And, upon the whole, we agree with the court below that the presumption of reasonableness existing in favor of the action of the Commission was not overcome in the showing that was made upon the application for an injunction.

The penalty provisions, except as a ground for invoking the jurisdiction of a Federal court in equity, are not relied upon by appellant. They are contained in certain sections of the constitution and statutes of Arizona applicable to public service corporations. Constitution, Art. XV, §§ 16 and 17; Public Service Corporation Act, Laws 1912, ch. 90, §§ 65, 68, 74 a & b, 76, 77, 79, 81; Rev. Stat. 1913, §§ 2341, 2344, 2350 a & b, 2352, 2353, 2355, 2357. They are clearly separable from the order of the Commission and the constitutional and statutory provisions under which it was made. Constitution, Art. XV, § 5; Public Service Corporation Act, Laws 1912, ch. 90, § 36; Rev. Stat. 1913, § 2312.

Therefore, in advance of an attempt to enforce the pen-

alty provisions, we need not pass judgment upon them. *Grenada Lumber Co.* v. *Mississippi*, 217 U. S. 433, 443; *West. Un. Tel. Co. v. Richmond*, 224 U. S. 160, 172; *The Minnesota Rate Cases*, 230 U. S. 352, 380; *Louis. & Nash. R. R.* v. *Garrett*, 231 U. S. 298, 319; *Grand Trunk Ry.* v. *Michigan Ry. Comm.*, 231 U. S. 457, 473; *Ohio Tax Cases*, 232 U. S. 576, 594.

The court below expressed the view that the cause should be retained in order to restrain prosecutions for penalties during such time as would be reasonably required to enable the corporation to comply with the order of the Commission. The court's order, as entered upon complainant's application, contains no provision upon the subject. Our affirmance of that order will be without prejudice to the authority of the District Court to deal with the question of penalties.

Affirmed.